12 Am. Jur. 2d Bills and Notes XIII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 441.1, 442

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 441.1, 442

End of Document

12 Am. Jur. 2d Bills and Notes § 566

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

A. In General

§ 566. Actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 441.1, 442

Treatises and Practice Aids

As to remedies to be liberally administered—generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 1 [Rev] General Provisions [Westlaw®(r): Search Query]

Any right or obligation declared by the Uniform Commercial Code (U.C.C.) is enforceable by action, unless the provision declaring it specifies a different and limited effect.[1] Generally, a promissory note is enforceable under traditional principles of contract law.[2]

Comment:

Any right or obligation described in the U.C.C. is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles.[3]

Remedies provided in the U.C.C. are to be liberally administered to the end that the aggrieved party may be put in as good a

position as if the other party had fully performed, but neither consequential, nor special, nor penal damages may be had, except as specifically provided in the U.C.C. or by other rule of law.[4]

A suit for damages arising from the breach of the terms of a promissory note presents an action at law.[5]

The U.C.C. does not purport to alter any procedural requirements of the forum state.[6] However, U.C.C. §§ 3-101 et seq., which governs negotiable instruments, contains provisions concerning various procedural matters, including:
(1) the applicable periods of limitations;[7]
(2) the right of a person not in possession of a lost or stolen instrument to sue on the instrument;[8]

(3) the right of a defendant sued on an instrument to vouch in a third party who might be answerable over to the defendant;[9] and
(4) the burden of establishing the validity of signatures on instruments.[10]

Footnotes

1 U.C.C. § 1-305(b).
A party may enforce a note pursuant to the U.C.C. Valley National Bank v. Marcano, 174 Conn. App. 206, 166 A.3d 80, 92 U.C.C. Rep. Serv. 2d 1175 (2017).
The term "action," as used to connote a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined. U.C.C. § 1-201(b)(1).
As to defenses, claims in recoupment, and related claims or grounds for relief, generally, see §§ 494 to 565.
As to rescission, injunctive relief, and other remedies for improper negotiation of an instrument, see § 189.

2 Amrusi v. Nwaukoni, 155 A.D.3d 814, 65 N.Y.S.3d 62 (2d Dep't 2017) (abrogated on other grounds by, Ajdler v. Province of Mendoza, 33 N.Y.3d 120, 99 N.Y.S.3d 749, 123 N.E.3d 233 (2019)).

3 Official Comment 2 to U.C.C. § 1-305.

4 U.C.C. § 1-305(a).

5 Walker v. Probandt, 25 Neb. App. 30, 902 N.W.2d 468, 93 U.C.C. Rep. Serv. 2d 838 (2017), review denied, (May 8, 2018) and cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 223 (2018).

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 1-305:9 [Rev.] (3d ed.).

7 §§ 571 to 572.

8 § 271.

9 U.C.C. § 3-119.

10 § 587.

12 Am. Jur. 2d Bills and Notes § 567

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

A. In General

§ 567. Action on negotiable instrument or original obligation; effect of taking security

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 441.1, 442

Ordinarily, where an action is brought by the payee or indorser of a negotiable instrument, it is brought on the instrument itself; however, where the instrument is dishonored, the holder of a note taken for an underlying contractual obligation has a choice of suing on the note itself or on the contract.[1]

Remedies available to a lender under a promissory note are not lost simply by taking a security interest in the debtor's collateral, as a secured party, i.e., a person who has loaned money and secured collateral to assure repayment, may also, at its option, ignore that security and satisfy its judgment from other property in the hands of the judgment debtor.[2]

Footnotes

1 O'Neill v. Steppat, 270 N.W.2d 375, 24 U.C.C. Rep. Serv. 1214 (S.D. 1978).
A tendered check is a conditional payment only, and the underlying obligation is revived upon the dishonor of the instrument. Rains v. Lewis, 20 Wash. App. 117, 579 P.2d 980 (Div. 2 1978).

2 Born v. Born, 304 Kan. 542, 374 P.3d 624, 89 U.C.C. Rep. Serv. 2d 1074 (2016).

End of Document

12 Am. Jur. 2d Bills and Notes § 568

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

A. In General

§ 568. Joinder and splitting of causes of action on negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 441.1, 442

Modern practice statutes and rules of practice generally provide for liberal joinder of different causes of action.[1] Thus, a party asserting a claim to relief may join as many claims as he or she has against an opposing party.[2] For example, one having the right to sue on a promissory note, or on the original indebtedness, such as a book account or an account stated, may properly join these causes of action in one complaint; the two claims are not inconsistent, and no election is required if but one recovery is sought.[3] Likewise, no misjoinder is made by joining in one action the principal obligor and a guarantor of the obligation, since the causes of action arise out of the same transaction or transactions connected with the same subject matter and require the same proof against all of the defendants.[4]

The person entitled to bring a single cause of action or an entire and indivisible demand on a bill or note, generally, cannot divide or split that cause of action or demand, so as to make it the subject of several actions.[5] All installment payments on a note, which are due at the time an action on the note is commenced, should be sought in a single action, since recovery of one installment may bar the recovery of other installments which are then due.[6]

Footnotes

1 Am. Jur. 2d, Actions § 77
As to joinder of causes of action, see Am. Jur. 2d, Actions §§ 72 to 98.

2 Am. Jur. 2d, Actions § 77.

3 Goldwater v. Oltman, 210 Cal. 408, 292 P. 624, 71 A.L.R. 871 (1930); Blackshear Mfg. Co. v. Harrell, 191 Ga. 433, 12 S.E.2d 328 (1940); Republic Nat. Bank of Dallas v. Strealy, 163 Tex. 36, 350 S.W.2d 914 (1961).

4 Arcady Farms Mill. Co. v. Wallace, 242 N.C. 686, 89 S.E.2d 413, 53 A.L.R.2d 517 (1955).

As to the joinder of parties plaintiff in actions on bills and notes, see § 580.
As to the joinder of parties defendant, see § 581.

[5] Grue v. Hensley, 357 Mo. 592, 210 S.W.2d 7 (1948); Blake v. Weiden, 291 N.Y. 134, 51 N.E.2d 677, 149 A.L.R. 1050 (1943).
As to splitting causes of action, generally, see Am. Jur. 2d, Actions §§ 99 to 104.

[6] Grue v. Hensley, 357 Mo. 592, 210 S.W.2d 7 (1948).

End of Document

12 Am. Jur. 2d Bills and Notes XIII B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 445, 451(1), 452(1), 483
West's Key Number Digest, Limitation of Actions 48(1)

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Limitation of Actions
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 445, 451(1), 452(1), 483
West's A.L.R. Digest, Limitation of Actions 48(1)

End of Document

12 Am. Jur. 2d Bills and Notes § 569

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 569. Accrual of action on negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 445
West's Key Number Digest, Limitation of Actions 48(1)

A.L.R. Library

When statute of limitations commences to run against promise to pay debt "when able," "when convenient," or the like, 67 A.L.R.5th 479

When statute of limitations begins to run against note payable on demand, 71 A.L.R.2d 284

The U.C.C. does not contain a separate section defining when a cause of action accrues on an instrument; rather, accrual of a cause of action is stated in various sections dealing with the obligations of parties to an instrument.[1]

The statute of limitations for an action on a writing for the payment of money generally begins to run when the obligation to pay arises.[2] Thus, with respect to a promissory note payable on demand, the cause of action to recover on such a note accrues at the time of its execution.[3] On the other hand, a claim for relief on a promissory note that is not payable on demand accrues the day the note matures[4] or when the default occurs.[5]

Practice Tip:

An action seeking enforcement of a promissory note that is payable on a certain date in the future is generally not justiciable nor ripe for determination.[6]

An action involving a negotiable instrument accrues at the time the check is negotiated; that is, the statute of limitations begins to run at the time the check amount is debited from the maker's account.[7]

No demand normally need be made prior to the filing of an action on a demand instrument, unless a special statute so provides.[8] However, where the transaction shows an intent that the cause of action is not to accrue until actual demand, the court will give effect to that intention.[9] Likewise, where a note provides that it is payable on demand after the happening of a specified event, the statute of limitations does not begin to run upon the execution and delivery of the note.[10]

Footnotes

1 Official Comment 1 to U.C.C. § 3-118.

2 Corrales v. Murwood, Inc., 232 S.W.3d 609 (Mo. Ct. App. E.D. 2007).

3 Sce v. Ach, 56 A.D.3d 457, 867 N.Y.S.2d 140 (2d Dep't 2008); Edmundson v. Bank of America, 194 Wash. App. 920, 378 P.3d 272 (Div. 1 2016).

4 Mortgage Investments Corp. v. Battle Mountain Corp., 70 P.3d 1176 (Colo. 2003), as modified on denial of reh'g, (June 9, 2003); Sarva v. Chakravorty, 34 A.D.3d 438, 826 N.Y.S.2d 74 (2d Dep't 2006).
Creditor's claim for breach of a promissory note did not accrue until the debtor failed to pay the note upon its maturity, where there was no evidence that the creditor accelerated the note after the debtor failed to make scheduled payments. Henry v. Strategic Exchange, LLC, 340 Ga. App. 437, 797 S.E.2d 672 (2017).

5 Mielke v. Deutsche Bank National Trust Company as Trustee for GSAA Home Equity Trust 2005-MTR1, 264 So. 3d 249, 97 U.C.C. Rep. Serv. 2d 889 (Fla. 1st DCA 2019).
An assignee's cause of action to enforce a promissory note against a cosigner accrued when the borrower and cosigner defaulted on the promissory note, not when the note was assigned, since, at the time of default, the lender had the right to accelerate payments and bring a successful suit on the note. Hemar Ins. Corp. of America v. Ryerson, 108 S.W.3d 90, 50 U.C.C. Rep. Serv. 2d 1147 (Mo. Ct. App. E.D. 2003).

6 Bingham Greenebaum Doll, LLP v. Lawrence, 567 S.W.3d 127 (Ky. 2018).

7 Psak, Graziano, Piasecki & Whitelaw v. Fleet Nat. Bank, 390 N.J. Super. 199, 915 A.2d 42, 61 U.C.C. Rep. Serv. 2d 855 (App. Div. 2007).

8 Clark v. Gibbs, 69 F.2d 364 (C.C.A. 5th Cir. 1934).
The specific provisions of a non-U.C.C. statute, providing that a cause of action on a demand note accrued on the first written demand for payment, were controlling, as against the provision of the U.C.C. concerning the accrual of such a cause of action. Wetmore v. Brennan, 378 So. 2d 79 (Fla. 3d DCA 1979).

9 In re Estate of Fauskee, 497 N.W.2d 324, 22 U.C.C. Rep. Serv. 2d 785 (Minn. Ct. App. 1993); Martin v. Ford, 853 S.W.2d 680 (Tex. App. Texarkana 1993), writ denied, (Aug. 26, 1993).

10 Richman v. Kauffman, 48 A.D.2d 988, 369 N.Y.S.2d 565 (3d Dep't 1975); Loomis v. Republic Nat. Bank of Dallas, 653 S.W.2d 75, 39 U.C.C. Rep. Serv. 915 (Tex. App. Dallas 1983), writ refused n.r.e., (Sept. 14, 1983).

12 Am. Jur. 2d Bills and Notes § 570

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 570. Accrual of action on negotiable instrument—Upon acceleration; installment payments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 445
West's Key Number Digest, Limitation of Actions 48(1)

A.L.R. Library

When statute of limitations commences to run against promise to pay debt "when able," "when convenient," or the like, 67 A.L.R.5th 479

When statute of limitations begins to run against note payable on demand, 71 A.L.R.2d 284

When a contract provides for acceleration of the maturity of a debt in the event of a default, the statute of limitations will generally run from the date the option to accelerate is exercised.[1] Each installment of notes is a distinct cause of action and thus, the statute of limitations to collect on the notes begins to run against each installment from the time it matures or comes due, and the limitations period on the entire debt does not begin to run until the creditor elects to declare the balance due and owing under the acceleration clause.[2] Where a note provides that it is to become due and payable immediately, at the option of the payee, upon default in the payment of any installment, the statute of limitations does not begin to run upon the maker's default on an installment; instead, the applicable period of limitations starts from the time that the payee elects to exercise the option to accelerate.[3] In the absence of an acceleration clause, the statute begins to run only as to the installment or interest which is in default.[4]

Footnotes

[1] Brady v. UBS Financial Services, Inc., 538 F.3d 1319 (10th Cir. 2008); Premier Capital, Inc. v. Doucette, 2002 ME

83, 797 A.2d 32, 47 U.C.C. Rep. Serv. 2d 1409 (Me. 2002); Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562 (Tex. 2001).
As to the effect of an acceleration clause on the time of payment of an instrument, see § 93.
As to the acceleration of the date of maturity of an instrument, see §§ 164 to 167.

[2] U.S. v. Sather, 2001 DSD 7, 131 F. Supp. 2d 1146 (D.S.D. 2001).
The statute of limitations begins to run on an installment obligation when each installment falls due. Toomey v. Cammack, 345 A.2d 453 (D.C. 1975).

[3] Florian v. Lenge, 91 Conn. App. 268, 880 A.2d 985, 58 U.C.C. Rep. Serv. 2d 898 (2005); Kehoe v. Lambert, 633 S.W.2d 576 (Tex. App. Houston 14th Dist. 1982), writ refused n.r.e., (Sept. 15, 1982).

[4] Becker v. Lammers, 193 Neb. 839, 229 N.W.2d 557 (1975).

End of Document

12 Am. Jur. 2d Bills and Notes § 571

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 571. Periods of limitations for actions on negotiable instrument; actions to enforce obligations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 451(1), 452(1)
West's Key Number Digest, Limitation of Actions 48(1)

A.L.R. Library

When statute of limitations commences to run against promise to pay debt "when able," "when convenient," or the like, 67 A.L.R.5th 479

When statute of limitations begins to run against note payable on demand, 71 A.L.R.2d 284

Treatises and Practice Aids

As to statute of limitations, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

The U.C.C.[1] states the statute of limitations applicable to different kinds of negotiable instruments and to miscellaneous causes of action arising under Revised Article 3,[2] including:

(1) a six-year period after the due date or dates stated in the instrument, other than certificates of deposit, which are payable at a definite time, or, if a due date is accelerated, within six years after the accelerated due date;[3] and
(2) except as provided for certain bank checks and certificates of deposit, a six-year period after demand for payment is made

to the maker of a demand note, or within 10 years after the last payment of principal or interest if no demand has been made.[4]

Comment:

The U.C.C. §§ 3-101 et seq. statute of limitations provision does not attempt to state all rules with respect to a statute of limitations; for example, the circumstances under which the running of a limitations period may be tolled is left to other law.[5]

Except as provided by statute[6] in the case of certain bank checks, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft, or within 10 years after the date of the draft, whichever period expires first.[7]

Comment:

The foregoing provision applies primarily to personal uncertified checks, which are payment instruments rather than credit instruments; teller's checks, cashier's checks, certified checks, and traveler's checks are treated differently, because they are commonly dealt with as cash equivalents.[8]

An action to enforce the obligation of an acceptor of a certified check, or the issuer of a teller's check, cashier's check, or traveler's check, must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.[9] On the other hand, an action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced within six years after:

(1) the due date or dates stated in the draft or acceptance, if the obligation of the acceptor is payable at a definite time; or
(2) the date of the acceptance, if the obligation of the acceptor is payable on demand.[10]

Likewise, an action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker; however, if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.[11]

Footnotes

1 U.C.C. § 3-118.

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-118:2 [Rev.] (3d ed.).

3 U.C.C. § 3-118(a).
A promissory note is payable at a definite time if, among other things, it is payable at a time or times readily ascertainable at the time the promise or order is issued. State ex rel., Board of Regents for University of Oklahoma v. Livingston, 2005 OK CIV APP 25, 111 P.3d 734, 197 Ed. Law Rep. 878, 57 U.C.C. Rep. Serv. 2d 193 (Div. 3 2005).
As to the acceleration of the date of maturity of an instrument, see §§ 164 to 167.

[4] U.C.C. § 3-118(b).
As to statutes of limitations, generally, see Am. Jur. 2d, Limitation of Actions §§ 1 to 408.

[5] Official Comment 1 to U.C.C. § 3-118.
As to the tolling of a period of limitations, see Am. Jur. 2d, Limitation of Actions §§ 148 to 194.

[6] U.C.C. § 3-118(d).

[7] U.C.C. § 3-118(c).
As to the acceptance of drafts, see §§ 333 to 342.
As to presentment and dishonor of drafts, see §§ 279 to 332.

[8] Official Comment 3 to U.C.C. § 3-118.

[9] U.C.C. § 3-118(d).

[10] U.C.C. § 3-118(f).
When a draft is accepted it is, in effect, turned into a note of the acceptor. Official Comment 5 to U.C.C. § 3-118.

[11] U.C.C. § 3-118(e).

End of Document

12 Am. Jur. 2d Bills and Notes § 572

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 572. Periods of limitations for actions on negotiable instrument; actions to enforce obligations—Conversion, breach of warranty, and other actions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 451(1), 452(1)
West's Key Number Digest, Limitation of Actions 48(1)

A.L.R. Library

When statute of limitations commences to run against promise to pay debt "when able," "when convenient," or the like, 67 A.L.R.5th 479

When statute of limitations begins to run against note payable on demand, 71 A.L.R.2d 284

Treatises and Practice Aids

As to statute of limitations, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Unless governed by other laws regarding claims for indemnity or contribution, the following actions must be commenced within three years after the cause of action or claim for relief accrues:
(1) an action for conversion of an instrument, for money had and received, or a like action based on conversion;[1]

(2) a suit for breach of warranty;[2] or
(3) an action to enforce an obligation, duty, or right arising under U.C.C. §§ 3-101 et seq. and not otherwise governed by the

section of the U.C.C. specifying the time for commencing actions on negotiable instruments.[3]

Comment:

The statutes of some states may use the term "claim for relief," instead of the more traditional term "cause of action."[4]

In the absence of fraud by the party invoking the statute of limitations, a cause of action for conversion of a negotiable instrument accrues when the defendant wrongfully exercises dominion over it; the discovery rule, under which the cause of action does not accrue until the plaintiff acquires knowledge or reason to know of the wrongful conduct, normally does not apply in such a case.[5] For example, the discovery rule does not apply in computing the statute of limitations in an action against a drawee bank for conversion resulting from payment of a check with a forged indorsement,[6] or payment of embezzled funds.[7]

Footnotes

1 U.C.C. § 3-118(g)(i).

2 U.C.C. § 3-118(g)(ii).

3 U.C.C. § 3-118(g)(iii), referring to U.C.C. § 3-118.

4 Official Comment 6 to U.C.C. § 3-118.

5 Menichini v. Grant, 995 F.2d 1224, 20 U.C.C. Rep. Serv. 2d 959 (3d Cir. 1993); Palmer Mfg. & Supply, Inc. v. BancOhio Natl. Bank, 93 Ohio App. 3d 17, 637 N.E.2d 386, 25 U.C.C. Rep. Serv. 2d 190 (2d Dist. Clark County 1994); Wang v. Farmers State Bank of Winner, 447 N.W.2d 516, 13 U.C.C. Rep. Serv. 2d 459 (S.D. 1989).
As to postponement of the running of the statute of limitations by reason of fraudulent concealment of a cause of action and the discovery rule, see Am. Jur. 2d, Limitation of Actions §§ 162 to 168.

6 Husker News Co. v. Mahaska State Bank, 460 N.W.2d 476, 13 U.C.C. Rep. Serv. 2d 46 (Iowa 1990); Gallagher v. Santa Fe Federal Employees Federal Credit Union, 132 N.M. 552, 2002-NMCA-088, 52 P.3d 412, 48 U.C.C. Rep. Serv. 2d 655 (Ct. App. 2002).

7 C-Wood Lumber Co., Inc. v. Wayne County Bank, 233 S.W.3d 263, 61 U.C.C. Rep. Serv. 2d 877 (Tenn. Ct. App. 2007).

End of Document

12 Am. Jur. 2d Bills and Notes § 573

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 573. Postponement or suspension of statute of limitations for action on negotiable instrument due to acknowledgment or new promise; partial payment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 451(1), 452(1)
West's Key Number Digest, Limitation of Actions 48(1)

An admission or acknowledgment by a debtor of a subsisting debt, from which a promise to pay can be implied, may take a case out of the operation of the statute of limitations; although no particular form is necessary, such an acknowledgment must be clear, distinct, and unequivocal.[1] As a general rule, it makes no difference whether the acknowledgment or new promise is made before or after the statute of limitations has run.[2] If made before the statute has run, the acknowledgment will fix a new date from which the applicable period of limitations will run on the same cause of action;[3] if made after the statute has run, it will revive the cause of action and start the statute running anew.[4]

The limitations period on an action on a promissory note also will begin anew when a partial payment is made by the debtor before the statute of limitations has expired,[5] because the partial payment has the same general effect as that resulting from an acknowledgment of or new promise to pay a debt.[6]

Footnotes

1 Kojro v. Sikorski, 267 A.2d 603 (Del. Super. Ct. 1970).
As to a renewal note as an acknowledgment or new promise to pay, see § 574.

2 Golden Rule Oil Co. v. Liebst, 153 Kan. 123, 109 P.2d 95 (1941).

3 Barnwell v. Hanson, 80 Ga. App. 738, 57 S.E.2d 348 (1950).

4 Barnwell v. Hanson, 80 Ga. App. 738, 57 S.E.2d 348 (1950); Wentland v. Stewart, 236 Iowa 661, 19 N.W.2d 661, 161 A.L.R. 1206 (1945); In re Schultz' Estate, 252 Wis. 126, 30 N.W.2d 714 (1948).

[5] Wells v. Barefoot, 55 N.C. App. 562, 286 S.E.2d 625 (1982).

[6] Conn v. Atkinson, 227 Ky. 594, 13 S.W.2d 759 (1929); McMahan v. Dorchester Fertilizer Co., 184 Md. 155, 40 A.2d 313 (1944).

End of Document

12 Am. Jur. 2d Bills and Notes § 574

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 574. Postponement or suspension of statute of limitations for action on negotiable instrument due to extension of time; renewal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 483
West's Key Number Digest, Limitation of Actions 48(1)

Forms

Forms relating to extension, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

A binding promise by the holder of a note to extend the time for payment tolls the statute of limitations until the expiration of the extended period.[1] A renewal note constitutes a specific form of acknowledgment and a new promise, such as will take the case out of the statute of limitations.[2]

Footnotes

1 Credit Service Corp. v. Barker, 308 Mass. 476, 33 N.E.2d 293 (1941).
A cause of action on a promissory note accrued, and the six-year limitations period began to run, on the maturity date of an unrecorded promissory-note amendment that extended the maturity date of the original note, not on the maturity date as specified in the original note. Holta v. Certified Financial Services, Inc., 49 P.3d 1104 (Alaska 2002).
As to extensions and renewals of negotiable instruments, generally, see §§ 168 to 173.

2 Easton v. Ash, 18 Cal. 2d 530, 116 P.2d 433 (1941); Clarke v. Clarke, 1944 OK 293, 194 Okla. 455, 152 P.2d 908 (1944).

End of Document

12 Am. Jur. 2d Bills and Notes § 575

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

B. Time for Commencement of Action

§ 575. Laches in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 451(1), 452(1)
West's Key Number Digest, Limitation of Actions 48(1)

The doctrine of laches does not apply where there is a specific statute of limitations which is applicable and an action is brought within the period set by statute.[1] Thus, a holder of commercial paper who brings suit thereon within the applicable period of limitations is not barred from pursuing the suit by laches principles.[2]

Footnotes

1 Landreth v. First Nat. Bank of Cleburne County, 45 F.3d 267, 25 U.C.C. Rep. Serv. 2d 1167 (8th Cir. 1995) (involving an action on a certificate of deposit).

2 Beathune v. Cain, 30 Colo. App. 321, 494 P.2d 603 (App. 1971); Kay v. Fernandez, 373 So. 2d 946 (Fla. 3d DCA 1979); UAW-CIO Local No. 31 Credit Union v. Royal Ins. Co., Ltd., 594 S.W.2d 276, 28 U.C.C. Rep. Serv. 1435 (Mo. 1980).

End of Document

12 Am. Jur. 2d Bills and Notes XIII C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 443(1), 456, 457, 459, 460

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Parties
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 443(1), 456, 457, 459, 460

End of Document

12 Am. Jur. 2d Bills and Notes § 576

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 576. Persons entitled to enforce negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 443(1), 456

Under Article 3 the following persons are entitled to enforce a negotiable instrument: (1) the holder of the instrument, (2) a nonholder in possession of the instrument who has the rights of a holder, or (3) a person not in possession of the instrument who is entitled to enforce a lost or dishonored instrument.[1] A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.[2]

Observation:

The person entitled to enforce a note has standing to seek a personal judgment against the promisor on that obligation, while a mortgagee or its successor and assign has standing to foreclose on the mortgage.[3]

A person in possession of a note endorsed in blank, is the valid holder of the note.[4] A party in possession of a note, endorsed in blank and thereby made payable to its bearer, is the valid holder of the note, and is entitled to enforce the note.[5] Further, a person may be a person entitled to enforce an instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.[6]

To establish entitlement to enforce a negotiable instrument a third party must prove both physical possession and the right to enforcement through either a proper indorsement or a transfer by negotiation.[7]

Observation:

Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it.[8]

To effectively show a direct and concrete injury, a party seeking to enforce a promissory note must establish that it has the right to enforce the note.[9]

Footnotes

1 U.C.C. § 3-301.
Promissory notes are, by definition, negotiable instruments which, by law, may be enforced by a holder, a nonholder in possession who has the rights of the holder, or a person not in possession who nevertheless is entitled to enforce the note. Federal Nat. Mortg. Ass'n v. McFadyen, 194 So. 3d 418, 89 U.C.C. Rep. Serv. 2d 652 (Fla. 3d DCA 2016).

2 U.C.C. § 3-301.

3 U.S. Bank National Association v. Franko, 2018-Ohio-687, 107 N.E.3d 142 (Ohio Ct. App. 8th Dist. Cuyahoga County 2018).

4 JPMorgan Chase Bank Nat. Ass'n v. Simoulidis, 161 Conn. App. 133, 126 A.3d 1098, 88 U.C.C. Rep. Serv. 2d 114 (2015).

5 JPMorgan Chase Bank Nat. Ass'n v. Simoulidis, 161 Conn. App. 133, 126 A.3d 1098, 88 U.C.C. Rep. Serv. 2d 114 (2015).

6 JPMorgan Chase Bank Nat. Ass'n v. Simoulidis, 161 Conn. App. 133, 126 A.3d 1098, 88 U.C.C. Rep. Serv. 2d 114 (2015).

7 Bank of New York v. Romero, 2014-NMSC-007, 320 P.3d 1, 82 U.C.C. Rep. Serv. 2d 716 (N.M. 2014).

8 BAC Home Loans Servicing, LP v. Smith, 2016-NMCA-025, 366 P.3d 714, 88 U.C.C. Rep. Serv. 2d 27 (N.M. Ct. App. 2015).

9 Los Alamos National Bank v. Velasquez, 98 U.C.C. Rep. Serv. 2d 852 (N.M. Ct. App. 2019).

End of Document

12 Am. Jur. 2d Bills and Notes § 577

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 577. Plaintiffs in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 456

Standing to enforce a promissory note is established by the provisions of the Uniform Commercial Code.[1] Standing to bring an action on a promissory note involves the right to enforce the note and must exist when suit is filed.[2] Whether a party is entitled to enforce a note as holder or by some other sort of authority is an issue of capacity.[3] A party's authority to enforce the obligations and responsibilities established in a promissory note need be determined prior to the request for relief by reason of the alleged breach of the obligation, as absent standing, a party's claim is not justiciable, and the courts will not inquire into the merits of the claim.[4]

The plaintiff must be a holder of the instrument or a nonholder with the rights of a holder.[5] However, a person who has no interest in an instrument as either a holder or an owner cannot sue thereon without the owner's assent.[6]

A party lawfully in possession of the original note is entitled to enforce such note.[7]

Statutes requiring that an action be brought by the real party in interest do not supersede the provision of the Uniform Commercial Code which allows a person in possession of an instrument to enforce it, as a holder, even though he or she is not the owner.[8] Thus, the legal owner of a promissory note may maintain a cause of action even though the actual or beneficial ownership of the note lies in another.[9]

Footnotes

1 BAC Home Loans Servicing, LP v. Farina, 154 Conn. App. 265, 107 A.3d 972 (2014).

2 Beaumont v. Bank of New York Mellon, 81 So. 3d 553 (Fla. 5th DCA 2012).

3 Orix Capital Markets, LLC v. La Villita Motor Inns, J.V., 329 S.W.3d 30 (Tex. App. San Antonio 2010).

[4] Wells Fargo Bank, N.A. v. Heath, 2012 OK 54, 280 P.3d 328 (Okla. 2012).

[5] Channing Real Estate, LLC v. Gates, 159 Conn. App. 59, 122 A.3d 677 (2015), judgment aff'd in part, rev'd in part on other grounds, 326 Conn. 123, 161 A.3d 1227 (2017).
The holder of a promissory note may maintain an action on the note in the name of the payee so long as the action is brought with the consent of the original payee, and the person bringing suit in the name of the original payee must also establish his or her status as either the holder or purchaser of the note. New Haven Savings Bank v. Follins, 431 F. Supp. 2d 183 (D. Mass. 2006) (applying Massachusetts law).

[6] IBP, Inc. v. Mercantile Bank of Topeka, 6 F. Supp. 2d 1258, 36 U.C.C. Rep. Serv. 2d 270 (D. Kan. 1998) (a drawer has no right to maintain a common-law conversion action because a negotiable instrument is the property of the holder or payee, not the drawer); Sheiman v. Lafayette Bank and Trust Co., 4 Conn. App. 39, 492 A.2d 219, 40 U.C.C. Rep. Serv. 1789 (1985).

[7] Croushore v. BAC Home Loans Servicing, L.P., 381 S.W.3d 331 (Ky. Ct. App. 2012).

[8] Howell v. Flora, 155 Kan. 640, 127 P.2d 721 (1942).
As to the requirement imposed by real-party-in-interest statutes that an action be brought by the real or beneficial owner of the chose in action, see Am. Jur. 2d, Parties § 36.

[9] Hubby v. Willis Agency, Inc., 131 Colo. 565, 283 P.2d 1080 (1955); Kirk v. Schumeth, 92 Ohio App. 442, 50 Ohio Op. 18, 110 N.E.2d 803 (2d Dist. Montgomery County 1952); FFP Marketing Co., Inc. v. Long Lane Master Trust IV, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005) (the beneficial owner of a promissory note is not even a necessary party to a suit on the note).

End of Document

12 Am. Jur. 2d Bills and Notes § 578

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 578. Plaintiffs in actions on negotiable instruments—Payees and indorsees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 456

Forms

Forms relating to complaints against indorser, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

A payee who is in possession of an instrument is presumed to own it and may sue on it.[1]

An indorsee in possession of a negotiable instrument, likewise, is a holder who has a right to sue on the instrument in his or her own name.[2] The right of the holder of a negotiable instrument payable to bearer, or payable to order and indorsed in blank, to sue cannot be rebutted by proof that he or she has no beneficial interest in the instrument.[3] However, the right of a restrictive indorsee for collection to sue is dependent upon the right of the indorser, and the indorsee therefore may not bring an action which the indorser could not.[4]

Footnotes

[1] Hubby v. Willis Agency, Inc., 131 Colo. 565, 283 P.2d 1080 (1955).
A successor payee, a wholly owned subsidiary of the original payee, was a real party in interest in an action alleging a promissory note maker was in default, given that all of the payee's assets were transferred to the subsidiary and the payee became merely a holding company. McGuire Performance Solutions, Inc. v. Massengill, 2006 PA Super 199, 904 A.2d 971 (2006).

[2] ABC Money Exchange v. Pub. Emp. Retirement Sys. of Ohio, 70 Ohio App. 3d 732, 591 N.E.2d 1359, 18 U.C.C. Rep. Serv. 2d 202 (8th Dist. Cuyahoga County 1990).
Holder status depends upon delivery of an order instrument with a proper indorsement. Northwestern Nat. Ins. Co. v. Crockett, 857 S.W.2d 757 (Tex. App. Beaumont 1993).

[3] Collins v. Gilbert, 94 U.S. 753, 24 L. Ed. 170, 1876 WL 19548 (1876) (stating that nothing short of fraud, if unattended with mala fides, is sufficient to allow such a rebuttal).
As to blank indorsements, see § 196.

[4] Follett v. Clark, 19 Wash. 2d 518, 143 P.2d 536 (1943).
As to restrictive indorsements, see §§ 200 to 202.

End of Document

12 Am. Jur. 2d Bills and Notes § 579

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 579. Plaintiffs in actions on negotiable instruments—Assignees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 456

A person to whom a note has been assigned, but not negotiated, can sue on the note as a transferee with the same right as the transferor to enforce the instrument.[1] Thus, a mere assignee may bring an action on the instrument as its owner, even though the assignee is not a holder.[2]

Footnotes

1 Financial Management Task Force, Inc. v. Altberger, 807 P.2d 1230, 17 U.C.C. Rep. Serv. 2d 496 (Colo. App. 1990). As to transfer of title to instruments by assignment, see § 182.

2 Lack v. Akins, 6 Cal. App. 2d 194, 44 P.2d 424 (2d Dist. 1935).

End of Document

12 Am. Jur. 2d Bills and Notes § 580

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 580. Joinder of plaintiffs in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 457

The joinder of parties plaintiff is confined to those having a joint interest in the subject of the suit, and it is immaterial in what proportions they may be concerned, or whether they have suffered injury or damages to the same extent.[1] In actions on bills and notes, the proper and necessary parties plaintiff are determined by the statutes and rules applicable to contract actions, but the provisions of the U.C.C. may govern in case of a conflict.[2]

When suit is brought against the maker of a note by one payee, the copayee may be joined as an unwilling plaintiff in order to protect the maker from the danger of multiple liability.[3]

An action may be brought by the pledgee of a note without the joinder of the pledgor as a party plaintiff.[4] Likewise, an assignor is neither a necessary nor an indispensable party to an action brought by the assignee of a note, where any defense which is available against the assignor can be asserted against the assignee.[5]

Footnotes

1 Am. Jur. 2d, Parties § 120.

2 Sheiman v. Lafayette Bank and Trust Co., 4 Conn. App. 39, 492 A.2d 219, 40 U.C.C. Rep. Serv. 1789 (1985).
As to required or permissive joinder of parties, see Am. Jur. 2d, Parties §§ 112 to 119.

3 Vance v. Vance, 124 Ariz. 1, 601 P.2d 605, 27 U.C.C. Rep. Serv. 728 (1979).
Where an instrument is payable to two or more persons not alternatively, all joint payees must be made parties to an enforcement action; although the recalcitrant copayees do not need to be joined as *plaintiffs*, they can be joined as defendants. Piatt v. Medford Highlands, LLC, 173 Or. App. 409, 22 P.3d 767, 44 U.C.C. Rep. Serv. 2d 28 (2001).

[4] Fontainebleau Hotel Corp. v. James Talcott, Inc., 164 So. 2d 264 (Fla. 3d DCA 1964).

[5] Bank of Boston Intern. of Miami v. Arguello Tefel, 644 F. Supp. 1423, 3 U.C.C. Rep. Serv. 2d 1069 (E.D. N.Y. 1986).

End of Document

12 Am. Jur. 2d Bills and Notes § 581

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

C. Parties

§ 581. Defendants in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 459, 460

Forms

Forms relating to liability of party signing, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

Joint and several obligations create separate liability on the part of each obligor, and each may be sued separately.[1] Thus, when a promissory note provides for joint and several liability, not all borrowers on the note are required to be joined in an action to enforce the note.[2] On the other hand, where there is no several liability, all joint obligors of a note are necessary and indispensible parties in a suit brought on the note.[3]

Footnotes

1 American Sec. Bank v. Nishihara, 3 Haw. App. 594, 656 P.2d 1347 (1983).

2 Hubert v. Lawson, 146 Ga. App. 698, 247 S.E.2d 223 (1978); International Sav. and Loan Ass'n, Ltd. v. Carbonel, 93 Haw. 464, 5 P.3d 454 (Ct. App. 2000); Badour v. Zifkin, 96 Mich. App. 325, 292 N.W.2d 201 (1980); Dixon v. Brannan, 970 S.W.2d 384 (Mo. Ct. App. E.D. 1998).

3 First Nat. Bank of Shreveport v. Crawford, 426 So. 2d 1348 (La. Ct. App. 2d Cir. 1983); Dublin Transp., Inc. v. Goebel, 133 Ohio App. 3d 272, 727 N.E.2d 938 (10th Dist. Franklin County 1999).

End of Document

12 Am. Jur. 2d Bills and Notes XIII D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

D. Pleading

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 461.1, 462(1), 472.1, 473, 476 to 479, 484

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Pleadings
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 461.1, 462(1), 472.1, 473, 476 to 479, 484

End of Document

12 Am. Jur. 2d Bills and Notes § 582

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

D. Pleading

1. Complaint or Petition

§ 582. Complaint or petition in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 461.1, 462(1)

Forms

Forms relating to actions against maker, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

In an action brought on a negotiable instrument, such as a promissory note, the petition must allege facts on which the plaintiff's right to recover from the defendant on the instrument depends.[1] A person suing on a promissory note is generally not required to plead or prove the contractual relationship giving rise to the execution and delivery of the note.[2]

Allegations that (1) there exists a valid promissory note signed by the maker, (2) there remains a balance due on the note, and (3) demand on the maker for payment has been made and refused leaving the maker in default are adequate to survive summary judgment.[3] The failure to cite the applicable U.C.C. section in a complaint does not bar a holder's recovery under the U.C.C. where the complaint adequately defines the issue in dispute, and the maker is sufficiently apprised of the claimed applicability of the U.C.C.[4]

Footnotes

1 Retamco, Inc. v. Dixilyn-Field Drilling Co., 693 S.W.2d 520 (Tex. App. Houston 14th Dist. 1985).

[2] Fellom v. Adams, 274 Cal. App. 2d 855, 79 Cal. Rptr. 633 (1st Dist. 1969); TeleRecovery of Louisiana, Inc. v. Gaulon, 738 So. 2d 662, 38 U.C.C. Rep. Serv. 2d 853 (La. Ct. App. 5th Cir. 1999), writ denied, 751 So. 2d 224 (La. 1999).

[3] FPI Development, Inc. v. Nakashima, 231 Cal. App. 3d 367, 282 Cal. Rptr. 508 (3d Dist. 1991); Gravois v. Helicopter Charter, Ltd., 416 So. 2d 609 (La. Ct. App. 4th Cir. 1982); Mobley v. Baker, 72 S.W.3d 251 (Mo. Ct. App. W.D. 2002).

[4] Florian v. Lenge, 91 Conn. App. 268, 880 A.2d 985, 58 U.C.C. Rep. Serv. 2d 898 (2005) (the holder specifically referenced the U.C.C. in objecting to the maker's motion for summary judgment).

End of Document

12 Am. Jur. 2d Bills and Notes § 583

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

D. Pleading

1. Complaint or Petition

§ 583. Allegations concerning status of holder in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 461.1, 462(1)

In an action on a negotiable instrument, the plaintiff, generally, must allege that he or she is the holder or owner of the instrument.[1] However, when the plaintiff is the payee of a promissory note that has been attached to the complaint, the plaintiff is not required to allege in the complaint that he or she is the holder of the note because the payee or endorsee of a note is the prima facie owner and holder.[2] However, when the plaintiff is not the payee, the plaintiff must aver the facts showing the execution of the note and the assignment or other transfer to him- or herself.[3]

In an action to recover on a check brought by an assignee of the instrument, allegations to the effect that the assignor was a holder in due course and the instrument was regularly transferred are sufficient to establish the holder-in-due-course status of the plaintiff.[4]

Footnotes

1 Albergo v. Gigliotti, 96 Utah 170, 85 P.2d 107, 129 A.L.R. 967 (1938).
In an action to enforce a negotiable instrument, the plaintiff's failure to plead his status as a holder of the instrument, or as a nonholder with the rights of a holder, properly is challenged by a motion to strike. Ninth RMA Partners, L.P. v. Krass, 57 Conn. App. 1, 746 A.2d 826, 41 U.C.C. Rep. Serv. 2d 585 (2000).
As to holders who are entitled to enforce negotiable instruments, see §§ 208 to 209.

2 First Federal Bank v. Aldridge, 230 N.C. App. 187, 749 S.E.2d 289 (2013).

3 First Federal Bank v. Aldridge, 230 N.C. App. 187, 749 S.E.2d 289 (2013).

4 Blake v. Samuelson, 34 Colo. App. 183, 524 P.2d 624, 15 U.C.C. Rep. Serv. 131 (App. 1974).

End of Document

12 Am. Jur. 2d Bills and Notes § 584

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

D. Pleading

2. Answer

§ 584. Answer in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 472.1, 473

Forms

Forms relating to answers, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to answer, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

The purpose of an answer is to formulate the issues by means of defenses addressed to the allegations of the complaint.[1]

A general denial is sufficient to raise the issue of legal ownership of a nonnegotiable promissory note, and places the burden on the plaintiff to prove his or her status as legal owner.[2]

Unless specifically denied in the pleadings, each signature on a negotiable instrument is admitted.[3]

Footnotes

[1] Am. Jur. 2d, Pleading § 261.
As to defenses in actions on negotiable instruments, generally, see §§ 494 to 503.

[2] FFP Marketing Co., Inc. v. Long Lane Master Trust IV, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005).

[3] Southtrust Bank of Georgia v. Parker, 226 Ga. App. 292, 486 S.E.2d 402, 33 U.C.C. Rep. Serv. 2d 136 (1997); Johnson v. Drury, 763 So. 2d 103 (La. Ct. App. 5th Cir. 2000).
As to the burden of establishing a signature, see §§ 587 to 589.

End of Document

12 Am. Jur. 2d Bills and Notes § 585

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

D. Pleading

2. Answer

§ 585. Pleading affirmative defenses in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 476 to 479, 484

A.L.R. Library

Economic duress or business compulsion in execution of promissory note, 79 A.L.R.3d 598

Forms

Forms relating to defenses in answers, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to defenses against holder in due course, see Am. Jur. Pleading and Practice Forms, Commercial Code[Westlaw®(r) Search Query]

Forms relating to defenses against one not a holder in due course, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

Challenges to a promissory note, mature and regular on its face, or to the debt it represents, must be made by an affirmative defense.[1] Affirmative defenses to an action on a negotiable instrument, such as fraud or coercion, may be waived if they are not pleaded.[2] Other affirmative defenses or matters in avoidance that must be pleaded in order to provide a defense to an action on a negotiable instrument include those based upon the applicable statute of limitations,[3] payment,[4] accord and satisfaction,[5] estoppel,[6] holder in due course status,[7] failure of a condition precedent to liability,[8] illegality,[9] lack of

consideration,[10] duress,[11] mutual mistake,[12] unconscionability,[13] and the intention that the note be void.[14]

Footnotes

1 Cole Taylor Bank v. Shannon, 772 So. 2d 546 (Fla. 1st DCA 2000).
The signer of a note who asserted that he had signed in a representative capacity and that he had disclosed that fact to the lender was raising a defense of avoidance or affirmative defense. Federal Deposit Ins. Corp. v. K-D Leasing Co., 743 S.W.2d 774, 6 U.C.C. Rep. Serv. 2d 156 (Tex. App. El Paso 1988).

2 Thompson Trading, Ltd. v. Allied Breweries Overseas Trading Ltd., 748 F. Supp. 936 (D.R.I. 1990).
Promisee was not precluded from arguing an affirmative defense of fraud in promisor's suit on promissory note, even though she did not set forth the defense in the answer portion of her "answer and reconventional demand to the suit," where, prior to seeking a continuance in the case, the promisor was aware of the promisee's claim that she did not sign the promissory note and could not have been surprised when the issue arose again a month later when the trial resumed. Kim v. Kim, 970 So. 2d 1158 (La. Ct. App. 5th Cir. 2007).

3 Rye v. Phillips, 203 Minn. 567, 282 N.W. 459, 119 A.L.R. 1120 (1938).
As to the statutes of limitations which are applicable in actions to enforce obligations created by negotiable instruments, see §§ 571 to 572.

4 Gulf Coast Bank & Trust Co. v. Donnaud's Inc., 759 So. 2d 268 (La. Ct. App. 5th Cir. 2000); Roth v. JPMorgan Chase Bank, N.A., 439 S.W.3d 508 (Tex. App. El Paso 2014); U.S. Bank Nat. Ass'n v. Whitney, 119 Wash. App. 339, 81 P.3d 135, 52 U.C.C. Rep. Serv. 2d 1 (Div. 3 2003).

5 First Nat. Bank & Trust Co. of Williston v. Jacobsen, 431 N.W.2d 284 (N.D. 1988); Advantage Group Inv., Inc. v. Pacific Southwest Bank, F.S.B., 972 S.W.2d 866 (Tex. App. Corpus Christi 1998).

6 Jackson v. Mundaca Financial Services, Inc., 349 Ark. 84, 76 S.W.3d 819 (2002); First Nat. Bank & Trust Co. of Williston v. Jacobsen, 431 N.W.2d 284 (N.D. 1988).

7 National Accident Ins. Underwriters, Inc. v. Citibank, FSB, 333 F. Supp. 2d 720, 54 U.C.C. Rep. Serv. 2d 797 (N.D. Ill. 2004) (applying Illinois law, holder in due course status can be pled as an affirmative defense to a conversion claim under the U.C.C.).

8 First Nat. Bank & Trust Co. of Williston v. Jacobsen, 431 N.W.2d 284 (N.D. 1988).

9 Pichon v. American Heritage Banco, Inc., 983 N.E.2d 589 (Ind. Ct. App. 2013).

10 Pepin Mfg., Inc. v. ESwallow USA, LLC, 194 So. 3d 973 (Ala. Civ. App. 2015); Santomieri v. Mangen, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018); DeClaire v. G & B Mcintosh Family Ltd. Partnership, 260 S.W.3d 34 (Tex. App. Houston 1st Dist. 2008).
A debtor's failure to raise the affirmative defense of lack of consideration in his answer did not result in a waiver of the defense where the debtor raised the defense of lack of consideration in his opening statement and again in a motion for a directed verdict at the close of the evidence. Drake v. Wallace, 259 Ga. App. 111, 576 S.E.2d 87 (2003).

11 In re Hinkley, 89 B.R. 608 (S.D. Tex. 1988), judgment aff'd, 875 F.2d 859 (5th Cir. 1989).

12 DeClaire v. G & B Mcintosh Family Ltd. Partnership, 260 S.W.3d 34 (Tex. App. Houston 1st Dist. 2008).

13 Neiman v. Galloway, 704 So. 2d 1131 (Fla. 4th DCA 1998).

14 Saks v. Charity Mission Baptist Church, 90 Cal. App. 4th 1116, 110 Cal. Rptr. 2d 45 (2d Dist. 2001), as modified on denial of reh'g, (Aug. 21, 2001).

Works.

12 Am. Jur. 2d Bills and Notes XIII E Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 490 to 494, 496, 497

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Presumptions and Burden of Proof
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 490 to 494, 496, 497

End of Document

12 Am. Jur. 2d Bills and Notes § 586

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 586. Burden of proof and presumptions in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 490, 491

Treatises and Practice Aids

As to the burden of establishing, see Lawrence's Anderson on the Uniform Commercial Code, Article 1 [Rev] General Provisions [Westlaw®(r): Search Query]

U.C.C. §§ 3-101 et seq. contains various provisions concerning the burden of establishing facts, defenses, and holder-in-due-course status in actions brought on negotiable instruments.[1]

Definitions:

The burden of establishing a fact is the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.[2] To prove a fact means to meet the burden of establishing the fact.[3]

The party seeking enforcement of a negotiable instrument has the burden of showing that it is entitled to enforce the instrument.[4] However, in a suit on a promissory note, the plaintiff must merely produce the note in question to make out a prima facie case,[5] or when a promissory note, on its face, shows that it is past due and in default, the plaintiff establishes a

prima facie right to judgment,[6] and the burden then shifts to the defendant to prove any affirmative defenses.[7] The person seeking to enforce a lost, stolen, or destroyed instrument which the person does not possess has the burden of proving both the terms of the instrument and the right to enforce it.[8] Similarly, when a copayee of an instrument who is not in possession of it brings suits against the copayee in possession and the maker, the plaintiff has the burden of proving that he or she is the owner of the instrument and is entitled to its proceeds.[9]

Practice Tip:

In a suit on a promissory note, the plaintiff's burden of proof is straightforward; if plaintiff produces the note sued upon, then the plaintiff has proved entitlement to the amount evidenced by the note, and then the defendant must affirmatively show that the debt has been diminished or extinguished or is otherwise unenforceable.[10] If the person against whom a promissory note would be enforced fails to establish any defense, the holder is entitled to recovery.[11]

It is presumed that a written contract embodies the entire agreement of the parties, and this is particularly so where it is a promissory note which is in dispute.[12]

Footnotes

1 As to the burden of proving defenses, generally, see § 590.
As to the burden of establishing the validity of signatures on negotiable instruments, see §§ 587 to 589.
As to the burden of establishing holder-in-due-course status, see §§ 593, 594.

2 U.C.C. § 1-201(b)(8).

3 U.C.C. § 3-103(a)(13).

4 U.S. Bank, Nat. Ass'n v. Moore, 2012 OK 32, 278 P.3d 596 (Okla. 2012).

5 JPMorgan Chase Bank Nat. Ass'n v. Simoulidis, 161 Conn. App. 133, 126 A.3d 1098, 88 U.C.C. Rep. Serv. 2d 114 (2015); Whitney Bank v. Garden Gate New Orleans, L.L.C., 236 So. 3d 774 (La. Ct. App. 5th Cir. 2017), writ denied, 239 So. 3d 298 (La. 2018); Hansen v. Halliburton, 326 S.W.3d 478 (Mo. Ct. App. E.D. 2010).

6 Tselios v. Sarsour, 341 Ga. App. 471, 800 S.E.2d 636 (2017).
In a suit to enforce a promissory note or guaranty, the plaintiff has the burden of proving that the defendant is indebted to him or her and in a definite and correct amount. Mashburn Construction, L.P. v. CharterBank, 340 Ga. App. 580, 798 S.E.2d 251 (2017), cert. denied, (Aug. 14, 2017).

7 JPMorgan Chase Bank Nat. Ass'n v. Simoulidis, 161 Conn. App. 133, 126 A.3d 1098, 88 U.C.C. Rep. Serv. 2d 114 (2015); Tselios v. Sarsour, 341 Ga. App. 471, 800 S.E.2d 636 (2017); Whitney Bank v. Garden Gate New Orleans, L.L.C., 236 So. 3d 774 (La. Ct. App. 5th Cir. 2017), writ denied, 239 So. 3d 298 (La. 2018); Hansen v. Halliburton, 326 S.W.3d 478 (Mo. Ct. App. E.D. 2010).

8 § 273.

9 Hattaway v. Keefe, 191 Ga. App. 315, 381 S.E.2d 569, 10 U.C.C. Rep. Serv. 2d 143 (1989).

10 Sonnier v. Gordon, 194 So. 3d 47, 89 U.C.C. Rep. Serv. 2d 486 (La. Ct. App. 2d Cir. 2016).

11 Hansen v. Halliburton, 326 S.W.3d 478 (Mo. Ct. App. E.D. 2010).

[12] Harms v. Harms, 496 S.W.3d 534 (Mo. Ct. App. W.D. 2016).

End of Document

12 Am. Jur. 2d Bills and Notes § 587

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 587. Burden of establishing authenticity and validity of signatures on negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491, 492

A.L.R. Library

Mode and degree of proof required to establish genuineness of handwriting offered as standard or exemplar for comparison with a disputed writing or signature, 41 A.L.R.2d 575

Treatises and Practice Aids

As to proof of signatures and status as holder in due course, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to denial of signature or burden of establishing signature, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

In an action with respect to a negotiable instrument, the authenticity of, and authority to make, each signature on a negotiable

instrument is admitted, unless specifically denied in the pleadings.[1]

If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the party claiming under the signature.[2] A signature on an instrument is presumed to be genuine and authorized, unless the action is to enforce the liability of a purported signer who is dead or incompetent at the time of trial on that issue.[3]

Comment:

The foregoing presumption means that the burden of proving the authenticity of signatures on instrument does not shift to the party seeking to enforce it unless and until the opposing party makes adequate showing that signatures are not authentic.[4]

To rebut the presumption that a signature on a check is authentic and authorized, a defendant that denies the validity of the signature in its answer to a suit for payment of the check need not present the quantum of evidence necessary for the grant of a directed verdict.[5] Rather, the defendant must only present evidence sufficient to permit the trier of fact to make a finding in the defendant's favor.[6]

Footnotes

1 U.C.C. § 3-308(a).
To establish its standing to foreclose a mortgage by demonstrating that it is the holder of the mortgage note within the contemplation of the Uniform Commercial Code, a plaintiff, as the holder of a duly endorsed note in blank, is not required to submit proof that the person who endorsed the subject note to the plaintiff on behalf of the original lender was authorized to do so, since a signature on a negotiable instrument is presumed to be genuine or authorized. Nationstar Mortg., LLC v. MacPherson, 56 Misc. 3d 339, 54 N.Y.S.3d 825 (Sup 2017) (abrogated on other grounds by, Bank of New York Mellon v. Dieudonne, 171 A.D.3d 34, 96 N.Y.S.3d 354 (2d Dep't 2019)).
As to the effect of a failure to deny specifically the validity of a signature, see § 588.

2 U.C.C. § 3-308(a).

3 U.C.C. § 3-308(a).

4 In re Tyrell, 528 B.R. 790, 86 U.C.C. Rep. Serv. 2d 176 (Bankr. D. Haw. 2015) (under Hawai'i law).
The burden of establishing the validity of a signature is applicable only where the validity of the signature is at issue; it should not be used to burden unnecessarily a party bringing an action in conversion resulting from the payment of an instrument over an indorsement which all parties conceded was forged. Petty v. First Nat. Bank of Akron, 50 Ohio App. 2d 365, 4 Ohio Op. 3d 318, 363 N.E.2d 599, 21 U.C.C. Rep. Serv. 1375 (9th Dist. Summit County 1976).

5 Romano's Carryout, Inc. v. P.F. Chang's China Bistro, Inc., 196 Ohio App. 3d 648, 2011-Ohio-4763, 964 N.E.2d 1102, 75 U.C.C. Rep. Serv. 2d 610 (10th Dist. Franklin County 2011).

6 Romano's Carryout, Inc. v. P.F. Chang's China Bistro, Inc., 196 Ohio App. 3d 648, 2011-Ohio-4763, 964 N.E.2d 1102, 75 U.C.C. Rep. Serv. 2d 610 (10th Dist. Franklin County 2011).

12 Am. Jur. 2d Bills and Notes § 588

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 588. Burden of establishing authenticity and validity of signatures on negotiable instrument—Effect of failure to deny validity of signature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491, 492

Treatises and Practice Aids

As to proof of signatures and status as holder in due course, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

When the signature on an instrument is admitted by a failure to deny, specifically, the validity of the signature, or when its validity is otherwise admitted or established, production of the instrument entitles the holder to recover on it, unless the defendant establishes a defense or a claim in recoupment.[1]

Comment:

A holder proves entitlement to recover on an instrument by the mere production of it because a holder is a person entitled to enforce the instrument; any other person in possession of an instrument may recover only if that person has the rights of a holder.[2]

Footnotes

1 U.C.C. § 3-308(b).
A borrower had a duty to pay a promissory note, where the borrower never disputed that the signatures identified as those of its president and secretary were in fact the signatures of those individuals, nor denied that those individuals were authorized to bind the borrower. Dorsett v. Hispanic Housing and Educ. Corp., 389 S.W.3d 609 (Tex. App. Houston 14th Dist. 2012).
As to the burden of proving defenses, generally, see § 590.

2 Official Comment 2 to U.C.C. § 3-308.

End of Document

12 Am. Jur. 2d Bills and Notes § 589

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 589. Burden of establishing authenticity and validity of signatures on negotiable instrument—Where instrument signed by representative

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491, 492

Treatises and Practice Aids

As to proof of signatures and status as holder in due course, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Trial Strategy

Proof of Personal Liability of Corporate Officer on Promissory Note, 150 Am. Jur. Proof of Facts 3d 93

One who intends to sign an instrument in a representative capacity, normally, must identify the true maker by name and indicate the capacity in which the instrument is being signed.[1] An authorized representative who signs his or her own name to an instrument without naming the person represented will be held personally liable, unless he or she sustains the burden showing that the parties intended otherwise.[2]

If an action to enforce a negotiable instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, however, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under the provision of the Uniform Commercial Code[3] which allows a represented person to be held liable on an instrument signed by an authorized representative of that person.[4]

Footnotes

1 Mentesana v. Fabricators Intern., Inc., 599 S.W.2d 694 (Tex. Civ. App. Dallas 1980), writ refused n.r.e., (Sept. 10, 1980).

2 Haskell v. Border City Bank, 649 S.W.2d 133 (Tex. App. El Paso 1983).

3 U.C.C. § 3-402(a).

4 U.C.C. § 3-308(a).
As to signature by an agent, see § 440.

End of Document

12 Am. Jur. 2d Bills and Notes § 590

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 590. Burden of proving defenses in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491

Once the holder of a note or other negotiable instrument establishes a prima facie case by proof of the execution of the instrument, the burden shifts to the obligor to establish some defense in order to avoid liability.[1] All attacks on a negotiable instrument must be made by way of affirmative defenses as to which the burden of proof is on the defense.[2]

The Uniform Commercial Code provides that once signatures are proved or admitted and the instrument is produced, the defendant has the burden of establishing any defense.[3]

Observation:

When the defense is equitable in nature or involves fraud or mistake, some courts impose a higher degree of proof. A party raising the defense of fraud must prove each of the elements of fraud by "clear, convincing, and satisfactory evidence."[4]

Footnotes

[1] Ferguson v. F.D.I.C., 164 F.3d 894 (5th Cir. 1999) (applying federal law); Citicorp Intern. Trading Co., Inc. v. Western Oil & Refining Co., Inc., 790 F. Supp. 428, 19 U.C.C. Rep. Serv. 2d 499 (S.D. N.Y. 1992); Bashir v. Moayedi, 627 A.2d 997 (D.C. 1993); Tselios v. Sarsour, 341 Ga. App. 471, 800 S.E.2d 636 (2017); Ashland State Bank v. Elkhorn Racquetball, Inc., 246 Neb. 411, 520 N.W.2d 189, 24 U.C.C. Rep. Serv. 2d 968 (1994); U.S. Bank

Nat. Ass'n v. Scott, 2003 SD 149, 673 N.W.2d 646, 52 U.C.C. Rep. Serv. 2d 554 (S.D. 2003).
As to defenses to obligations on negotiable instruments, generally, see §§ 494 to 503.
As to nondelivery or nonissuance as a defense, see § 157.
As to conditional delivery or delivery for a special purpose, see § 159.
As to pleading an affirmative defense, see § 585.

[2] First Federal Sav. and Loan Ass'n of South Carolina v. Chrysler Credit Corp., 981 F.2d 127, 19 U.C.C. Rep. Serv. 2d 181 (4th Cir. 1992); Jay Gleason Advertising Service, Inc. v. Gleason, 193 Ga. App. 445, 388 S.E.2d 43 (1989); Bank of Hawaii v. Allen, 2 Haw. App. 185, 628 P.2d 211, 31 U.C.C. Rep. Serv. 1645 (1981); Ventures, Inc. v. Jones, 101 Idaho 837, 623 P.2d 145, 30 U.C.C. Rep. Serv. 1601 (1981); American Bank v. Saxena, 553 So. 2d 836 (La. 1989).

[3] U.C.C. § 3-308(b) [2002].

[4] Madill Bank and Trust Co. v. Herrmann, 1987 OK CIV APP 4, 738 P.2d 567, 3 U.C.C. Rep. Serv. 2d 1436 (Ct. App. Div. 3 1987).

End of Document

12 Am. Jur. 2d Bills and Notes § 591

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 591. Burden of proving defenses in actions on negotiable instruments—Want, failure, or illegality of consideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491, 493

Forms

Forms relating to consideration, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

In an action on a validly executed negotiable instrument, consideration is presumed,[1] and negotiable instruments are deemed prima facie to have been issued for valuable consideration.[2] This presumption, however, is subject to rebuttal[3] by evidence of a clear and cogent nature,[4] and the burden of showing there was no consideration is on the party attacking the note for want of consideration.[5] However, once evidence has been introduced to rebut the presumption of consideration, the burden of proof shifts back to the plaintiff to show, by a preponderance of the evidence, that there was consideration.[6]

Observation:

Want of consideration and failure of consideration are different defenses; a lack or want of consideration constitutes a bar to the action, while a partial failure of consideration goes only to reduce recovery and concedes consideration sufficient to sustain the instrument.[7]

The defendant, likewise, has the ultimate burden of establishing any defense based upon a contention that the consideration for a negotiable instrument was illegal.[8]

Footnotes

1 JPMorgan Chase Bank, N.A. v. Asia Pulp & Paper Co., Ltd., 707 F.3d 853, 84 Fed. R. Serv. 3d 1416, 79 U.C.C. Rep. Serv. 2d 699 (7th Cir. 2013) (applying Illinois law); Smith v. Thigpen, 298 Ga. App. 572, 680 S.E.2d 604 (2009); Santomieri v. Mangen, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018).

2 Merchants Bank v. Head, 161 So. 3d 1151 (Ala. 2014); Pannagl v. Kelly, 142 So. 3d 70 (La. Ct. App. 5th Cir. 2014).

3 JPMorgan Chase Bank, N.A. v. Asia Pulp & Paper Co., Ltd., 707 F.3d 853, 84 Fed. R. Serv. 3d 1416, 79 U.C.C. Rep. Serv. 2d 699 (7th Cir. 2013) (under Illinois law); Park v. Fortune Partner, Inc., 279 Ga. App. 268, 630 S.E.2d 871 (2006); Sonnier v. Gordon, 194 So. 3d 47, 89 U.C.C. Rep. Serv. 2d 486 (La. Ct. App. 2d Cir. 2016).
Under Georgia law, borrower's statement that he did not receive funds from lender was insufficient to rebut presumption of consideration arising from fact that promissory notes were under seal. Davis v. Daniels, 655 Fed. Appx. 755 (11th Cir. 2016).

4 JPMorgan Chase Bank, N.A. v. Asia Pulp & Paper Co., Ltd., 707 F.3d 853, 84 Fed. R. Serv. 3d 1416, 79 U.C.C. Rep. Serv. 2d 699 (7th Cir. 2013) (under Illinois law).

5 Merchants Bank v. Head, 161 So. 3d 1151 (Ala. 2014); Pannagl v. Kelly, 142 So. 3d 70 (La. Ct. App. 5th Cir. 2014); Neo Universe Inc. v. Ito, 147 A.D.3d 682, 48 N.Y.S.3d 352 (1st Dep't 2017); Santomieri v. Mangen, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018).

6 Sonnier v. Gordon, 194 So. 3d 47, 89 U.C.C. Rep. Serv. 2d 486 (La. Ct. App. 2d Cir. 2016).

7 First Nat. Bank v. Town of Luverne, 235 Ala. 606, 180 So. 283 (1938).

8 Benjamin v. Blake, 121 N.J.L. 10, 1 A.2d 263 (N.J. Sup. Ct. 1938); Great Am. Indem. Co. v. Berryessa, 122 Utah 243, 248 P.2d 367 (1952).

End of Document

12 Am. Jur. 2d Bills and Notes § 592

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 592. Burden of establishing unauthorized completion or alteration of negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491, 494

Treatises and Practice Aids

As to comparative negligence, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Trial Strategy

Commercial Paper: Negligence Contributing to Alteration or Unauthorized Signature Under U.C.C. § 3-406, 14 Am. Jur. Proof of Facts 2d 693

The burden of establishing that any completion of an instrument is unauthorized, or that words or numbers have been added to an incomplete instrument without authority of the signer, is on the person asserting the lack of authority.[1]

A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.[2] The burden of proving such a failure to exercise ordinary care, in such a case, is on the person asserting the preclusion.[3] However, if the person asserting preclusion fails to exercise ordinary care in paying or taking the instrument, and that failure contributes to a loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary

care contributed to the loss.[4] In that event, the burden of proving failure to exercise ordinary care is on the person precluded.[5]

Footnotes

1 § 101.

2 U.C.C. § 3-406(a).

3 U.C.C. § 3-406(c).
In seeking to show, in an employer's conversion action against an employee's bank, that the employer's negligence precluded the employer from asserting forged indorsements of checks that the employee deposited into her account, the bank bore the burden of proving that the employer failed to exercise ordinary care. Med Data Service Bureau, L.L.C. v. Bank of Louisiana in New Orleans, 898 So. 2d 482, 55 U.C.C. Rep. Serv. 2d 580 (La. Ct. App. 1st Cir. 2004).
A depository bank that took checks payable to a corporation and deposited them into an individual account based on forged endorsements could assert that the drawer was precluded from asserting the forgery against the bank by showing (1) that it took the instruments in good faith, (2) that the drawer failed to exercise ordinary care, and (3) that this failure substantially contributed to the making of the forged signatures. The Bank/First Citizens Bank v. Citizens and Associates, 82 S.W.3d 259, 48 U.C.C. Rep. Serv. 2d 26 (Tenn. 2002).

4 U.C.C. § 3-406(b).

5 U.C.C. § 3-406(c).

End of Document

12 Am. Jur. 2d Bills and Notes § 593

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 593. Burden of establishing proof of holder-in-due-course status in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 496, 497

A.L.R. Library

What constitutes taking instrument in good faith, and without notice of infirmities or defenses, to support holder-in-due-course status, under U.C.C. sec. 3-302, 36 A.L.R.4th 212

Treatises and Practice Aids

As to relevance of holder in due course status, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to holder in due course, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to proof of holder in due course status, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

A plaintiff is not required to assert holder-in-due-course status[1] as a holder of a negotiable instrument is presumed to be a holder in due course[2] unless there is evidence to the contrary.[3] However, if the plaintiff claims the rights of a holder in due course against a defense or claim in recoupment, the plaintiff has the burden of proof on that issue.[4] Until proof of a defense or claim in recoupment is made, the issue as to whether the plaintiff has the rights of a holder in due course does not arise, because any person who is entitled to enforce the instrument is entitled to recover on it in the absence of any such defense or claim.[5]

Although the defense that an instrument is stolen does not defeat the claim of a bona fide purchaser, it does shift the burden of proof to the purchaser of proving that he or she is bona fide.[6]

A nonholder seeking to enforce a note must prove the transfer by which he or she acquired the note.[7]

Footnotes

1 Official Comment 2 to U.C.C. § 3-308.

2 Ocwen Loan Servicing, LLC v. Branaman, 554 F. Supp. 2d 645, 65 U.C.C. Rep. Serv. 2d 602 (N.D. Miss. 2008); In re Woodsbey, 375 B.R. 145 (Bankr. W.D. Pa. 2007) (applying Pennsylvania law); RR Maloan Investments, Inc. v. New HGE, Inc., 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App. Houston 14th Dist. 2014).
The possession by the bearer of a note indorsed in blank imports prima facie that the bearer acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity, as required for holder in due course status, and the production of the note establishes a case prima facie against the makers and the bearer may rest there, while it is for the makers to set up and prove the facts which limit or change the bearer's rights. Chase Home Finance, LLC v. Fequiere, 119 Conn. App. 570, 989 A.2d 606 (2010).

3 RR Maloan Investments, Inc. v. New HGE, Inc., 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App. Houston 14th Dist. 2014).

4 Official Comment 2 to U.C.C. § 3-308.
Under statute governing validity of signatures in actions to enforce negotiable instruments (U.C.C. § 3-308(b)), the burden is on a plaintiff to prove the rights of a holder in due course, including where the defense is that the plaintiff did not take the instrument in good faith. State Sec. Check Cashing, Inc. v. American General Financial Services (DE), 409 Md. 81, 972 A.2d 882, 69 U.C.C. Rep. Serv. 2d 683 (2009).
As to what requirements must be met to establish holder-in-due-course status, see §§ 214 to 223.

5 Official Comment 2 to U.C.C. § 3-308.
The holder of an instrument is presumed to be a holder in due course unless there is evidence to the contrary; however, the presumption may be overcome by negating the elements requisite to holder in due course status and, once the presumption is overcome, the person claiming the rights of a holder in due course has the burden to establish his status as such. Max Duncan Family Investments, Ltd. v. NTFN Inc., 267 S.W.3d 447 (Tex. App. Dallas 2008).

6 Hollywood Nat. Bank v. International Business Machines Corp., 38 Cal. App. 3d 607, 113 Cal. Rptr. 494, 14 U.C.C. Rep. Serv. 782 (2d Dist. 1974).

7 Martin v. New Century Mortg. Co., 377 S.W.3d 79 (Tex. App. Houston 1st Dist. 2012).
An entity that is trying to establish that it is a nonholder in possession and, thus, has the rights of a holder of promissory note, has the burden of establishing that fact. Deutsche Bank Nat. Trust Co. v. Richardson, 2012 OK 15, 273 P.3d 50 (Okla. 2012).

End of Document

12 Am. Jur. 2d Bills and Notes § 594

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 594. Burden of establishing proof of holder-in-due-course status in actions on negotiable instruments—Effect of failure to establish

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 496, 497

A.L.R. Library

Fraud in the inducement and fraud in the factum as defenses under U.C.C. sec. 3-305 against holder in due course, 78 A.L.R.3d 1020

Treatises and Practice Aids

As to relevance of holder in due course status, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Only a holder in due course can recover on a negotiable instrument without regard to the maker's assertion of a personal defense, such as fraud in the inducement.[1] If the plaintiff fails to sustain the burden of showing holder-in-due-course status, then his or her claim is subject to all defenses that would be available on a simple contract.[2]

Comment:

Rather than asserting holder-in-due-course status, a plaintiff may elect to introduce no further evidence, in which case a verdict may be directed for the plaintiff or the defendant, or the issue of the defense or claim in recoupment may be left to the trier of fact, according to the weight and sufficiency of the defendant's evidence; the plaintiff also may elect to rebut the defense or claim in recoupment by proof to the contrary, in which case a verdict may be directed for either party or the issue may be for the trier of fact.[3]

Footnotes

1 Federal Nat. Mortg. Ass'n v. Gregory, 426 F. Supp. 282 (E.D. Wis. 1977); Funding Consultants, Inc. v. Aetna Cas. and Sur. Co., 187 Conn. 637, 447 A.2d 1163, 34 U.C.C. Rep. Serv. 591 (1982); Seinfeld v. Commercial Bank & Trust Co., 405 So. 2d 1039, 32 U.C.C. Rep. Serv. 1137 (Fla. 3d DCA 1981).
As to the use of parol evidence to establish fraud in the inducement, see § 600.
As to personal defenses, generally, see § 497.

2 Seamans v. Miller, 142 Ga. App. 147, 235 S.E.2d 542, 21 U.C.C. Rep. Serv. 1378 (1977).
Where a holder of notes sued on failed to establish that he had given value therefor, and thus, was not a holder in due course, the maker and an indorser of the notes were entitled to assert against the holder the defense of payment, as garnishees, to a creditor of the payee. Stone v. Star Amusement, Inc., 371 So. 2d 367, 26 U.C.C. Rep. Serv. 968 (La. Ct. App. 4th Cir. 1979).
Where the record showed that the plaintiff was not a holder in due course, because it had acquired the note with notice that it was overdue, the maker could assert the defense of accord and satisfaction. Foskey v. International Realty Sales & Exchanges, Inc., 180 Ga. App. 858, 350 S.E.2d 841 (1986).

3 Official Comment 2 to U.C.C. § 3-308.

End of Document

12 Am. Jur. 2d Bills and Notes § 595

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

E. Burden of Proof and Presumptions

§ 595. Burden of proving accommodation status in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 491

Trial Strategy

Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283§§ 8 to 23

A person claiming to be merely an accommodation party has the burden of proving that status.[1]

Footnotes

[1] In re TML, Inc., 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003) (applying Michigan law); In re Heritage Organization, L.L.C., 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006) (applying Texas law); Madison-Hunnewell Bank v. Hurt, 903 S.W.2d 175, 26 U.C.C. Rep. Serv. 2d 166 (Mo. Ct. App. E.D. 1995); Marvin E. Jewell & Co. v. Thomas, 231 Neb. 1, 434 N.W.2d 532, 9 U.C.C. Rep. Serv. 2d 646 (1989); Federal Land Bank of Louisville v. Taggart, 31 Ohio St. 3d 8, 508 N.E.2d 152, 3 U.C.C. Rep. Serv. 2d 1836 (1987).
As to the liability of accommodation parties, generally, see §§ 420 to 424.

End of Document

12 Am. Jur. 2d Bills and Notes XIII F Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501 to 514, 516 to 527

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Evidence
A.L.R. Index, Parol Evidence
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 501 to 514, 516 to 527

End of Document

12 Am. Jur. 2d Bills and Notes § 596

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

a. In General

§ 596. Admissibility of evidence in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501 to 514

A.L.R. Library

Mode and degree of proof required to establish genuineness of handwriting offered as standard or exemplar for comparison with a disputed writing or signature, 41 A.L.R.2d 575

The mere production of a note generally establishes prima facie authenticity and is sufficient to make a promissory note admissible.[1] Moreover, where the agreement between the parties consists of several instruments, it is proper to insist that all of the documents be placed before the court as establishing the rights of the parties.[2]

As in other cases, self-serving statements or declarations are not admissible on behalf of the party making them.[3] On the other hand, admissions or declarations against the proprietary or pecuniary interest of the declarant are admissible.[4] Furthermore, declarations and admissions made by the former holder of a note during the time of his or her ownership of the instrument may be admissible as primary evidence against a successor in interest of that holder.[5]

Footnotes

[1] Bucci v. Northwest Trustee Services, Inc., 197 Wash. App. 318, 387 P.3d 1139, 91 U.C.C. Rep. Serv. 2d 559 (Div. 1

2016), review denied, 188 Wash. 2d 1012, 394 P.3d 1011 (2017).
As to the necessity of producing the original of the instrument under the best evidence rule, see § 604.

[2] Johnson v. Smith, 84 So. 2d 722 (Fla. 1956).

[3] Farris v. Sturner, 264 F.2d 537 (10th Cir. 1959).

[4] In re Andrews' Estate, 245 Iowa 819, 64 N.W.2d 261 (1954).

[5] Trudeau v. Lussier, 123 Vt. 358, 189 A.2d 529, 10 A.L.R.3d 1188 (1963).

End of Document

12 Am. Jur. 2d Bills and Notes § 597

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

a. In General

§ 597. Admission of evidence as to transactions with deceased persons in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501

Under the laws commonly known as "dead man statutes," an interested person, generally, is incompetent to testify as to transactions with a deceased individual for the purpose of establishing a claim or defense against the decedent's estate.[1] Thus, the maker of a note ordinarily is precluded from offering testimony as to payments made to the deceased payee of the instrument.[2]

Footnotes

1 Am. Jur. 2d, Witnesses § 504.

2 Broward Nat. Bank of Fort Lauderdale v. Bear, 125 So. 2d 760, 84 A.L.R.2d 1352 (Fla. 2d DCA 1961); Jenkins v. Jenkins, 229 Miss. 499, 91 So. 2d 708 (1956); Bradley v. Buffington, 534 S.W.2d 571 (Mo. Ct. App. 1976).

End of Document

12 Am. Jur. 2d Bills and Notes § 598

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

b. Parol or Extrinsic Evidence

§ 598. Parol or extrinsic evidence in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501

The principle that extrinsic evidence is not admissible to add to, contradict, or vary the terms of a written instrument is applicable to bills and notes as well as to other instruments.[1] Thus, evidence offered by the makers of a note to show that they were induced to sign the instrument by the plaintiff's promise to advance them additional funds is inadmissible under the parol evidence rule, since it would alter the terms of the note.[2]

Parol evidence may be introduced to show that no contract exists between the parties, because an instrument was delivered subject to a condition precedent which has not been performed,[3] or that an instrument should not be enforced because of fraud, accident, or mistake.[4]

Parol evidence is admissible to identify the signer of an instrument.[5] Furthermore, the parol evidence rule does not apply if the instrument is ambiguous.[6] In such a case, parol evidence may be introduced to explain the ambiguity.[7] Furthermore, if an instrument is incomplete on its face, extrinsic evidence may be admitted to show the part which is missing.[8]

Footnotes

1 Montgomery v. Riess, 176 Cal. App. 2d 711, 1 Cal. Rptr. 550 (2d Dist. 1959).

2 Marine Midland Bank, N.A. v. Mattioli, 180 A.D.2d 406, 579 N.Y.S.2d 78 (1st Dep't 1992).

3 § 599.

[4] § 600.

[5] § 386.

[6] GTE Directories Corp. v. McKinnon, 734 S.W.2d 429 (Tex. App. Fort Worth 1987).

[7] Talbot v. Gadia, 123 Cal. App. 2d 712, 267 P.2d 436 (3d Dist. 1954); Southeastern Home Mortg. Co. v. Roll, 171 So. 2d 424 (Fla. 3d DCA 1965); Wise v. Duker, 57 Ohio App. 3d 62, 566 N.E.2d 1248 (9th Dist. Summit County 1988).

[8] Martin v. Ford, 853 S.W.2d 680 (Tex. App. Texarkana 1993), writ denied, (Aug. 26, 1993).
As to incomplete instruments, see §§ 99 to 102.

End of Document

12 Am. Jur. 2d Bills and Notes § 599

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

b. Parol or Extrinsic Evidence

§ 599. Using parol or extrinsic evidence to show conditions on payment under negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501

When a promissory note is unconditional on its face, a condition may not be added to it by parol evidence in the absence of fraud, accident, or mistake.[1] Likewise, where a defendant has unconditionally given a guarantee of a note, a claimed defense based upon an alleged condition subsequent cannot be substantiated by parol evidence.[2] However, parol or extrinsic evidence is admissible on behalf of a plaintiff to show that conditions upon which an instrument was to be effective have been performed.[3] Conversely, parol evidence may be used by a defendant to show that a condition precedent to liability has not been satisfied.[4] Thus, for example, such evidence is admissible against one who is not a holder in due course to show the delivery of the instrument sued upon was for a special purpose only.[5]

Footnotes

1 Gitt v. Myers, 273 Pa. Super. 310, 417 A.2d 664 (1979).
As to the showing of fraud, accident, or mistake, see § 600.

2 Chemical Bank v. 2440 Amsterdam Associates, 119 Misc. 2d 460, 463 N.Y.S.2d 153 (Sup 1983).

3 International Firearms Co. v. Kingston Trust Co., 6 N.Y.2d 406, 189 N.Y.S.2d 911, 160 N.E.2d 656 (1959).

4 Chemical Bank v. 2440 Amsterdam Associates, 119 Misc. 2d 460, 463 N.Y.S.2d 153 (Sup 1983).

5 Herzog Contracting Corp. v. McGowen Corp., 976 F.2d 1062, 23 Fed. R. Serv. 3d 765, 18 U.C.C. Rep. Serv. 2d 1170

(7th Cir. 1992); Chera v. The Shores, 145 N.J. Super. 19, 366 A.2d 994, 20 U.C.C. Rep. Serv. 698 (App. Div. 1976); Labar v. Cox, 635 S.W.2d 801, 33 U.C.C. Rep. Serv. 1397 (Tex. App. Corpus Christi 1982), writ refused n.r.e.
As to delivery of an instrument for a special purpose, see § 159.

End of Document

12 Am. Jur. 2d Bills and Notes § 600

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

b. Parol or Extrinsic Evidence

§ 600. Using parol or extrinsic evidence to show fraud, accident, or mistake as to negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 505 to 507

A.L.R. Library

Fraud in the inducement and fraud in the factum as defenses under U.C.C. sec. 3-305 against holder in due course, 78 A.L.R.3d 1020

Under an exception to the parol evidence rule, extrinsic evidence may be admitted to show fraud in the inducement of a negotiable instrument, such as a promissory note.[1] For such evidence to be admissible, however, there must be a showing that some type of device, trickery, or artifice was employed by the payee of the note other than a mere representation the maker would not be held liable on the instrument.[2]

Parol evidence also is admissible, as between the parties to an instrument, to show that it was executed due to a mistake[3] or accident.[4]

Footnotes

[1] Cosmopolitan Financial Corp. v. Runnels, 2 Haw. App. 33, 625 P.2d 390, 31 U.C.C. Rep. Serv. 146 (1981); Citizens Bank & Trust Co. v. Mitchell, 727 So. 2d 661 (La. Ct. App. 2d Cir. 1999); Town North Nat. Bank v. Broaddus, 569 S.W.2d 489, 24 U.C.C. Rep. Serv. 924 (Tex. 1978).
But see American Bank & Trust Co. in Monroe v. Vinson, 528 So. 2d 693 (La. Ct. App. 2d Cir. 1988) (noting cases in which parol evidence was not allowed for such purpose).

[2] Lindeburg v. Gulfway Nat. Bank, 624 S.W.2d 278 (Tex. App. Corpus Christi 1981), writ refused n.r.e., (Feb. 3, 1982).

[3] Sapin v. Security First Nat. Bank, 243 Cal. App. 2d 201, 52 Cal. Rptr. 254 (2d Dist. 1966); Scafidi v. Johnson, 409 So. 2d 316 (La. Ct. App. 4th Cir. 1981), writ granted, 413 So. 2d 499 (La. 1982) and judgment aff'd, 420 So. 2d 1113, 35 U.C.C. Rep. Serv. 167 (La. 1982).
But see American Bank & Trust Co. in Monroe v. Vinson, 528 So. 2d 693 (La. Ct. App. 2d Cir. 1988) (noting that some cases have not permitted the use of parol evidence for this purpose).

[4] Seth v. Lew Hing, 125 Cal. App. 729, 14 P.2d 537 (1st Dist. 1932); Stebens v. Wilkinson, 249 Iowa 365, 87 N.W.2d 16, 71 A.L.R.2d 277 (1957).

End of Document

12 Am. Jur. 2d Bills and Notes § 601

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

b. Parol or Extrinsic Evidence

§ 601. Using parol or extrinsic evidence to show lack, failure, or illegality of consideration in making of negotiable instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 503

The defenses of lack of consideration[1] and failure of consideration[2] may be shown by parol evidence. Parol evidence, likewise, may be introduced to establish that the consideration given for a negotiable instrument was illegal, even if that evidence contradicts the instrument.[3]

Footnotes

1 Wagner v. Bonucelli, 239 So. 2d 619 (Fla. 4th DCA 1970); Laspopoulos v. Earl, 376 So. 2d 965 (La. Ct. App. 4th Cir. 1979).

2 Houck v. Martin, 82 Ill. App. 3d 205, 37 Ill. Dec. 531, 402 N.E.2d 421 (4th Dist. 1980); Scafidi v. Johnson, 409 So. 2d 316 (La. Ct. App. 4th Cir. 1981), writ granted, 413 So. 2d 499 (La. 1982) and judgment aff'd, 420 So. 2d 1113, 35 U.C.C. Rep. Serv. 167 (La. 1982).
But see American Bank & Trust Co. in Monroe v. Vinson, 528 So. 2d 693 (La. Ct. App. 2d Cir. 1988) (noting a conflict of authority as to the admissibility of parol evidence).

3 Consumers Credit Service v. Craig, 75 A.2d 525 (Mun. Ct. App. D.C. 1950); Liberty Mut. Ins. Co. v. Gilreath, 191 S.C. 244, 4 S.E.2d 126, 129 A.L.R. 1148 (1939).

End of Document

12 Am. Jur. 2d Bills and Notes § 602

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

1. Admissibility

b. Parol or Extrinsic Evidence

§ 602. Using parol or extrinsic evidence to show accommodation status in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 501

Where the payee of a note knows that the comakers were, in fact, accommodation parties, oral evidence as to that status is properly admitted; to be a holder in due course against whom such evidence could not be offered, the payee cannot have notice of the accommodation.[1]

Footnotes

[1] Lee Federal Credit Union v. Gussie, 542 F.2d 887, 19 U.C.C. Rep. Serv. 630 (4th Cir. 1976).
An individual was entitled to introduce extrinsic evidence of his alleged accommodation status in an action brought by a bank which did not qualify as a holder in due course. First NH Bank v. Lawlor, 600 A.2d 1120, 17 U.C.C. Rep. Serv. 2d 538 (Me. 1992).

End of Document

12 Am. Jur. 2d Bills and Notes § 603

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

2. Weight and Sufficiency

§ 603. Weight and sufficiency of evidence in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 516 to 527

In a suit on a promissory note a prima facie case is made when the note, admittedly signed by the makers, is introduced[1] and evidence follows demonstrating the note is unpaid or that a balance is due and owing,[2] in the absence of any further evidence.[3] Once that prima facie case has been made, the plaintiff is entitled to judgment as a matter of law unless the defendant can establish a defense.[4]

When a plaintiff sues for recovery on a promissory note, the plaintiff does not have to prove all essential elements for a breach of contract but rather need only establish (1) the note in question, (2) that the defendant signed it, (3) that the plaintiff was the legal owner and holder thereof, and (4) that a certain balance is due and owing on the note.[5] The possession of a bearer instrument is prima facie evidence of ownership.[6] However, virtually any admissible evidence that the holder of a promissory note is not its owner is sufficient to rebut a presumption of ownership.[7]

Footnotes

1 Lewis v. Ikner, 349 Ga. App. 21, 825 S.E.2d 443 (2019); Whitney Bank v. Garden Gate New Orleans, L.L.C., 236 So. 3d 774 (La. Ct. App. 5th Cir. 2017), writ denied, 239 So. 3d 298 (La. 2018); Cygnus SBL Loans, LLC. v. Hejna, 2019 WL 1028064 (Mo. Ct. App. W.D. 2019); Bank of Am., N.A. v. Calloway, 2016-Ohio-7959, 74 N.E.3d 843 (Ohio Ct. App. 8th Dist. Cuyahoga County 2016), appeal not allowed, 150 Ohio St. 3d 1452, 2017-Ohio-8136, 83 N.E.3d 938 (2017).

2 Cygnus SBL Loans, LLC. v. Hejna, 2019 WL 1028064 (Mo. Ct. App. W.D. 2019).

3 FV-I, Inc. for Morgan Stanley Mortgage Capital Holdings, LLC v. Kallevig, 306 Kan. 204, 392 P.3d 1248, 92 U.C.C. Rep. Serv. 2d 586 (2017); Whitney Bank v. Garden Gate New Orleans, L.L.C., 236 So. 3d 774 (La. Ct. App. 5th Cir.

2017), writ denied, 239 So. 3d 298 (La. 2018).

4 L.D.F. Family Farm, Inc. v. Charterbank, 326 Ga. App. 361, 756 S.E.2d 593 (2014), adopted, 2014 WL 5018671 (Ga. State Ct. 2014).

5 Duchene v. Hernandez, 535 S.W.3d 251 (Tex. App. El Paso 2017).
To establish prima facie entitlement to judgment as a matter of law with respect to a promissory note, a plaintiff must show the existence of a promissory note, executed by the defendant, containing an unequivocal and unconditional obligation to repay, and the failure by the defendant to pay in accordance with the note's terms. Roopchand v. Mohammed, 154 A.D.3d 986, 62 N.Y.S.3d 514 (2d Dep't 2017).
In order to recover on a promissory note, the party seeking relief must show execution, delivery, consideration, demand, and nonpayment. Kyle v. Felfel, 803 S.E.2d 249 (N.C. Ct. App. 2017), review denied, 370 N.C. 281, 805 S.E.2d 682 (2017).

6 In re Woodberry, 383 B.R. 373, 65 U.C.C. Rep. Serv. 2d 228 (Bankr. D. S.C. 2008) (applying South Carolina law).

7 In re Oakmore Ranch Management, 337 B.R. 222 (B.A.P. 9th Cir. 2006) (applying California law).
As to admissibility of evidence, see §§ 596 to 597.

End of Document

12 Am. Jur. 2d Bills and Notes § 604

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

F. Evidence

2. Weight and Sufficiency

§ 604. Effect of nonproduction of instrument on presumptions relating to negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 516

Trial Strategy

Foundation for Admission of Secondary Evidence, 35 Am. Jur. Proof of Facts 2d 147

Where a party who claims to be the holder of a note or other negotiable instrument does not produce it, that party does not have the benefit of the presumption that the signatures on the note are valid.[1]

Where the negotiable instrument sued upon is in the possession of the plaintiff, the original of the document, normally, must be produced since it is the best evidence of the obligation.[2] However, nonproduction of the original instrument is excused, and secondary evidence of the execution and contents thereof is admissible, where the instrument has been lost or destroyed[3] and the plaintiff has satisfied the statutory requirements for recovery on such an instrument.[4] Thus, an individual who establishes ownership of a lost note, presents evidence as to the terms thereof, and accounts for the instrument's absence is entitled to recover, despite the fact that the note itself cannot be produced.[5]

Footnotes

[1] Union Sav. Bank v. Cassing, 691 S.W.2d 513, 41 U.C.C. Rep. Serv. 135 (Mo. Ct. App. W.D. 1985).

As to the presumption of the validity of signatures on an instrument in the absence of a specific denial, see §§ 587, 588.

[2] Vandergriff v. Vandergriff, 211 Ark. 848, 202 S.W.2d 967 (1947); Helmer v. Callaway, 342 So. 2d 254 (La. Ct. App. 4th Cir. 1977).
Under Florida law, a party suing on a promissory note must be in possession of the original note or reestablish the note. Dasma Investments, LLC v. Realty Associates Fund III, L.P., 459 F. Supp. 2d 1294 (S.D. Fla. 2006).

[3] Hach v. Anderson, 240 Iowa 792, 38 N.W.2d 94, 9 A.L.R.2d 968 (1949).

[4] Pecora v. Szabo, 94 Ill. App. 3d 57, 49 Ill. Dec. 577, 418 N.E.2d 431 (2d Dist. 1981); Kraft v. Sommer, 54 A.D.2d 598, 387 N.Y.S.2d 318, 20 U.C.C. Rep. Serv. 475 (4th Dep't 1976).
As to enforcement on lost, stolen, or destroyed instruments, see § 271.

[5] Good v. Good, 72 N.C. App. 312, 324 S.E.2d 43, 40 U.C.C. Rep. Serv. 1786 (1985).

End of Document

12 Am. Jur. 2d Bills and Notes XIII G Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 529 to 534, 536, 537, 539, 540

A.L.R. Library

A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Directed Verdicts
A.L.R. Index, Judgment Notwithstanding Verdict
A.L.R. Index, Questions of Law and Fact
A.L.R. Index, Uniform Commercial Code
West's A.L.R. Digest, Bills and Notes 529 to 534, 536, 537, 539, 540

End of Document

12 Am. Jur. 2d Bills and Notes § 605

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 605. Summary judgment in actions on negotiable instruments, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 536, 540

Forms

Forms relating to summary judgment, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

A motion for summary judgment may be filed in an action brought on a negotiable instrument[1] and may be filed even before the completion of discovery.[2] However, where the facts needed to oppose such a motion are peculiarly within the knowledge of the moving party, the motion will not be granted without affording the nonmoving party an opportunity to complete discovery.[3]

On a motion for summary judgment in a suit on a note, the court is not required to consider any extrinsic documents referenced in the note.[4]

Footnotes

1 Yslas v. D. K. Guenther Builders, Inc., 342 So. 2d 859 (Fla. 2d DCA 1977); Credit Indus. Co. v. Happel, Inc., 252 Iowa 213, 106 N.W.2d 667 (1960); Norwood Morris Plan Co. v. McCarthy, 295 Mass. 597, 4 N.E.2d 450, 107 A.L.R. 1215 (1936).
As to summary judgment, generally, see Am. Jur. 2d, Summary Judgment §§ 1 to 68.

2 Federal Deposit Ins. Corp. v. Hyer, 66 A.D.2d 521, 413 N.Y.S.2d 939 (2d Dep't 1979).

[3] Five Towns College v. Citibank, N.A., 108 A.D.2d 420, 489 N.Y.S.2d 338, 25 Ed. Law Rep. 461, 41 U.C.C. Rep. Serv. 503 (2d Dep't 1985).

[4] Atul Bhatara v. Futterman, 122 A.D.3d 509, 998 N.Y.S.2d 4 (1st Dep't 2014).

End of Document

12 Am. Jur. 2d Bills and Notes § 606

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 606. Summary judgment in actions on negotiable instruments, generally—Determination as to existence of triable issues

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 536, 540

The function of the trial court in passing on a motion for summary judgment in an action on a negotiable instrument is to determine whether there are genuine issues of material fact, and not to determine any issue of fact.[1] If the court determines that there are substantial triable issues of fact, a grant of summary judgment in favor of the moving party is precluded.[2] For example, IRS Form 1099-C filed by a bank with regard to a promissory note, suggesting that the debt had been discharged, was sufficient, along with other evidence, to create a genuine issue of material fact as to whether the debt associated with the note had been discharged by the bank, precluding summary judgment on the bank's probate claim against the borrower's estate to recover the amount owed on the note, as the bank's filing of the Form 1099-C was more significant than just presenting a rebuttable presumption of the bank's intent to discharge the debt.[3]

Once the plaintiff in an action to recover on a promissory note and guaranties submits evidence establishing its prima facie case, the summary judgment burden then shifts to the defendants to submit evidence establishing the existence of a triable issue of fact with respect to a bona fide defense.[4] However, in order to defeat summary judgment once the plaintiff, as holder of a promissory note, proves the maker's signature or the maker admits it, the defendant in an action to enforce the note must assert a valid defense to liability on the note, not separate and distinct claims that are unrelated to the question of liability.[5]

CUMULATIVE SUPPLEMENT

Cases:

Genuine issues of material fact existed as to whether sales agreement required cattle buyer to make an additional payment of $12,500 for an early payoff via an unconditional tender, precluding summary judgment on issue of whether debt was extinguished. Stromberger Farms, Inc. v. Johnson, 2020 SD 22, 942 N.W.2d 249 (S.D. 2020).

[END OF SUPPLEMENT]

Footnotes

1 GTE Automatic Elec. Inc. v. Martin's Inc., 127 A.D.2d 545, 512 N.Y.S.2d 107 (1st Dep't 1987).
As to the rules and principles governing summary judgment determinations, see Am. Jur. 2d, Summary Judgment §§ 39 to 59.

2 Sakow v. 633 Seafood Restaurant, Inc., 186 A.D.2d 31, 587 N.Y.S.2d 338 (1st Dep't 1992).
As to questions for the jury, see § 607.

3 In re Estate of Hofer, 2015 IL App (3d) 140542, 397 Ill. Dec. 565, 42 N.E.3d 480 (App. Ct. 3d Dist. 2015).

4 Griffon V, LLC v. 11 East 36th, LLC, 90 A.D.3d 705, 934 N.Y.S.2d 472 (2d Dep't 2011).

5 Whitney Bank v. Garden Gate New Orleans, L.L.C., 236 So. 3d 774 (La. Ct. App. 5th Cir. 2017), writ denied, 239 So. 3d 298 (La. 2018).

End of Document

12 Am. Jur. 2d Bills and Notes § 607

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 607. Determination of questions of law and fact at trial in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 537

Trial Strategy

Ratification of Forged or Unauthorized Signature, 7 Am. Jur. Proof of Facts 2d 675

Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283

Forms

Forms relating to jury instructions, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

In cases tried by a jury, it is the province of the court to determine and decide questions of law presented at the trial, and it is the province of the jury to decide or determine the facts of the case from the evidence adduced.[1] Where there is no factual dispute as to a particular issue, and there is, thus, no fact-finding function to be performed, the issue is not submissible to a jury.[2]

Whether an instrument is negotiable is a question of law.[3] Likewise, the question of whether a notation on a check requiring the payee to prove clear title to the material sold makes the check conditional is a law question properly addressed by the trial court.[4] Whether a promissory note is ambiguous is a question of law,[5] as is the applicability of the defense of laches.[6]

On the other hand, the following issues are questions of fact for the jury:

- whether or not a party is the holder and owner of a note, and thus entitled to bring suit on the note, or whether the party assigned or transferred the note[7]
- whether a signatory of a note, such as a comaker, is an accommodation party[8]
- whether the maker of a note has overcome the statutory presumption of consideration[9]
- the question whether or not an instrument is a forgery[10] and whether there has been a ratification of a forged signature[11]
- whether the parties have orally agreed to modify the terms of a promissory note,[12] since the resolution of the issue depends upon whether or not there has been a meeting of the minds of the parties as to the terms of the alleged modification[13]
- the issue of whether a promissory note is in default[14]
- the amount due on the instrument[15]

However, the principal and interest owing on a note may be determined by the court as a matter of law.[16]

Footnotes

1 Am. Jur. 2d, Trial § 589.

2 Coupounas v. Madden, 401 Mass. 125, 514 N.E.2d 1316 (1987).
While determining the elements of holder in due course status is ordinarily a task for the trier of fact, where the facts are undisputed and conclusive, a reviewing court can determine holder in due course status as a matter of law. Triffin v. Dillabough, 552 Pa. 550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).

3 Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. v. Bailey, 710 F. Supp. 737, 9 U.C.C. Rep. Serv. 2d 145 (C.D. Cal. 1989); FFP Marketing Co., Inc. v. Long Lane Master Trust IV, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005).

4 Western Bank v. RaDec Const. Co., Inc., 382 N.W.2d 406, 42 U.C.C. Rep. Serv. 1340 (S.D. 1986).

5 In re Heritage Organization, L.L.C., 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006) (applying Texas law); Marek Interior Systems, Inc. v. White, 230 Ga. App. 518, 496 S.E.2d 749, 35 U.C.C. Rep. Serv. 2d 932 (1998); Pelican Nat. Bank v. Provident Bank of Maryland, 381 Md. 327, 849 A.2d 475, 53 U.C.C. Rep. Serv. 2d 557 (2004).

6 Florian v. Lenge, 91 Conn. App. 268, 880 A.2d 985, 58 U.C.C. Rep. Serv. 2d 898 (2005).

7 Ingram v. Earthman, 993 S.W.2d 611, 40 U.C.C. Rep. Serv. 2d 500 (Tenn. Ct. App. 1998).

8 Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo. App. 2011); Rowan v. Riley, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003); Sack Lumber Co. v. Goosic, 15 Neb. App. 529, 732 N.W.2d 690 (2007); Belden v. Thorkildsen, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
As to the burden of proving accommodation status, see § 595.

9 Hunt v. Smith, 992 S.W.2d 303 (Mo. Ct. App. S.D. 1999); Wilson & Wilson Tax Services, Inc. v. Mohammed, 131 S.W.3d 231 (Tex. App. Houston 14th Dist. 2004).

10 Buck v. Coblentz, 18 Ohio L. Abs. 1, 1934 WL 1821 (Ct. App. 2d Dist. Montgomery County 1934).

11 Anderson v. Rizza Chevrolet, Inc., 9 F. Supp. 2d 908 (N.D. Ill. 1998) (applying Illinois law); Cook v. Great Western Bank & Trust, 141 Ariz. 80, 685 P.2d 145, 39 U.C.C. Rep. Serv. 214 (Ct. App. Div. 1 1984); Cherryvale Grain Co. v. First State Bank of Edna, 25 Kan. App. 2d 825, 971 P.2d 1204 (1999).

12 South Carolina Nat. Bank v. Silks, 295 S.C. 107, 367 S.E.2d 421 (Ct. App. 1988).

13 Davidson v. Citizens & Southern Nat. Bank, 158 Ga. App. 868, 282 S.E.2d 355, 32 U.C.C. Rep. Serv. 208 (1981).

14 Fielbon Development Co., LLC v. Colony Bank of Houston County, 290 Ga. App. 847, 660 S.E.2d 801, 46 A.L.R.6th

587 (2008).

15 Gans v. Georgia Federal Sav. & Loan Ass'n, 179 Ga. App. 660, 347 S.E.2d 615 (1986); Rente Co. v. Truckers Exp., Inc., 116 S.W.3d 326 (Tex. App. Houston 14th Dist. 2003).

16 § 610.

End of Document

12 Am. Jur. 2d Bills and Notes § 608

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 608. Determination of questions of law and fact at trial in actions on negotiable instruments—Judgment as a matter of law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 539

When a plaintiff seeking to enforce a promissory note establishes a prima facie case by producing the note and showing that it was executed,[1] the plaintiff is entitled to judgment as a matter of law unless the defendant can establish a defense.[2]

Where the outcome of an action on a bill or note depends entirely upon the resolution of a question of law, the court may properly direct a verdict in accordance with its determination of that question.[3] A verdict may be directed in favor of the plaintiff in the absence of evidence supporting a defense.[4] Thus, a payee is entitled to a directed verdict in a suit on promissory notes in which it has made a prima facie case by production of the instruments and by introducing testimony that they were unpaid, where the makers have not denied their signatures on the notes and have failed to establish any defenses.[5] Where there is insufficient competent evidence to enable the jury to calculate the amount owed on a note with reasonable certainty, direction of a verdict against the creditor is warranted.[6]

A motion for judgment notwithstanding the verdict, like a motion for a directed verdict, challenges whether the evidence presented at trial is legally sufficient to go to the jury. The standard for granting a motion for a judgment notwithstanding the verdict is the same as for a directed verdict.[7] For example, where the makers of a promissory note have proved that they were induced by fraud to execute the note, but are unable to offer any proof that the plaintiff had actual knowledge of facts and circumstances which amounted to bad faith, the plaintiff is a holder in due course who takes free of fraud which is not grounded on a misrepresentation as to the type of document which has been signed; the plaintiff therefore is entitled to judgment notwithstanding a verdict in favor of the defendants.[8]

Footnotes

[1] § 603.

[2] Gause v. Fidelity Bank, 332 Ga. App. 844, 775 S.E.2d 207 (2015).
As to establishing a defense, see §§ 494 to 560.

[3] Steele v. Vanderslice, 90 Ariz. 277, 367 P.2d 636 (1961).

[4] National City Bank of Cleveland v. Erskine & Sons, 65 Ohio L. Abs. 51, 110 N.E.2d 593 (Ct. App. 7th Dist. Mahoning County 1951), judgment aff'd, 158 Ohio St. 450, 49 Ohio Op. 395, 110 N.E.2d 598 (1953).

[5] Bank of Brookfield-Purdin, N.A. v. Burns, 724 S.W.2d 262 (Mo. Ct. App. W.D. 1986).
If no issue is raised as to the amount due on the bill or note in suit, and the ascertainment of the amount of interest is only a matter of mathematical computation, the court may direct the jury as to the amount of their verdict. Steele v. Vanderslice, 90 Ariz. 277, 367 P.2d 636 (1961).

[6] First Nat. Bank of Dalton v. Damil, Inc., 171 Ga. App. 237, 319 S.E.2d 54 (1984).

[7] Am. Jur. 2d, Trial § 719.

[8] Favors v. Yaffe, 605 S.W.2d 342, 31 U.C.C. Rep. Serv. 154 (Tex. Civ. App. Houston 14th Dist. 1980), writ refused n.r.e., (Mar. 11, 1981).

End of Document

12 Am. Jur. 2d Bills and Notes § 609

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 609. Judgment in actions on negotiable instruments and effect thereof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 540

Forms

Forms relating to judgments, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

The judgment entered on a bill or note must conform to the pleadings, as well as to the verdict or to the judge's findings of fact and conclusions of law.[1] The judgment also must be supported by the evidence.[2]

As in other cases, the verdict rendered in an action on a bill or note may cure a defect in the pleadings.[3] In addition, the rule that a judgment merges the cause of action on which the suit resulting in the judgment was brought generally applies to judgments on negotiable instruments; as a result, there is a discharge of the paper when a judgment is entered on it, and subsequent suits on the instrument are barred.[4]

Footnotes

1 Edmondson v. First State Bank of Mathis, 819 S.W.2d 605 (Tex. App. Corpus Christi 1991).

2 Derbigny v. Bank One, 809 S.W.2d 292 (Tex. App. Houston 14th Dist. 1991).

3 Bjelde v. Dolan, 248 Wis. 153, 21 N.W.2d 258 (1946).

[4] § 359.

End of Document

12 Am. Jur. 2d Bills and Notes § 610

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 610. Measure and amount of recovery in actions on negotiable instruments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 529 to 533

A.L.R. Library

Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default, 63 A.L.R.3d 10

Time from which interest is recoverable on demand note or like demand instrument containing no provision as to interest, 45 A.L.R.2d 1202

Rate of interest after maturity on obligation which fixes rate of interest expressly until maturity, 16 A.L.R.2d 902

The amount of the recovery on a negotiable instrument normally will be the face amount of the instrument, with interest and the amount of stipulated attorney's fees, if reasonable.[1] In addition, a lender may collect late charges for payments not paid by the due date prior to acceleration of the note.[2] Prejudgment interest may[3] or may not[4] be awarded.

While damages in an action to recover on a promissory note do not have to be proven with absolute certainty, they cannot be a matter of speculation, as there must be proof to a reasonable certainty as to their existence and the amount due.[5]

When the evidence clearly shows the amount of the maker's indebtedness on a note, any verdict less than the proven amount is erroneous.[6]

Observations:

If an instrument provides for interest but the rate of interest payable cannot be ascertained from the description used, interest is payable at the judgment rate in effect at the place of payment of the instrument at the time interest first accrues.[7]

When a variable interest rate is based on the rate of a failed institution, the trial court must determine whether the substitute rate is reasonable by examining the documents and testimony offered by the plaintiff.[8]

A holder who acquires notice of a claim, defense, or claim in recoupment before it has performed the entire agreed-upon consideration can become a holder-in-due-course only to the extent of its performance prior to the receipt of such notice.[9] As a result, the taker is a holder in due course only as to a fraction of the face amount of the instrument, which fraction is equal to the value of the partial performance divided by the value of the promised performance.[10]

A statute may allow for statutory damages in excess of the face amount of a check to a holder of a dishonored check,[11] which may allow for double[12] or treble damages[13] in the event of dishonor.

Footnotes

1 National Bank of North America v. Around the Clock Truck Service, Inc., 58 Misc. 2d 660, 296 N.Y.S.2d 606, 5 U.C.C. Rep. Serv. 866 (Sup 1968); Thompson v. Adcox, 63 S.W.3d 783 (Tenn. Ct. App. 2001); Coastal Shutters and Insulation, Inc. v. Derr, 809 S.W.2d 916 (Tex. App. Houston 14th Dist. 1991).
It is improper to deny interest where the obligation is a legal obligation based upon a promissory note. Wingfield v. Contech Const. Products, Inc., 83 Ark. App. 16, 115 S.W.3d 336 (2003).
The lender was not limited to the recovery of principal and interest in a suit to recover on promissory notes and could recover "premium" and "default interest" payments where such payments did not constitute an unenforceable penalty that was disproportionate to the value of the performance promised or an injury that actually occurred. GFL Advantage Fund, Ltd. v. Colkitt, 272 F.3d 189 (3d Cir. 2001).
As to limitations on the recovery of attorney's fees, see § 611.

2 McKeever v. Fiore, 78 Conn. App. 783, 829 A.2d 846 (2003); NILS, LLC v. Antezana, 171 Md. App. 717, 912 A.2d 45 (2006).
As to acceleration, see §§ 93, 93, 164 to 167.

3 Gaffin v. Heymann, 428 A.2d 1066, 32 U.C.C. Rep. Serv. 176 (R.I. 1981).

4 Palmer v. Stassinos, 348 F. Supp. 2d 1070 (N.D. Cal. 2004), order clarified on reconsideration, 419 F. Supp. 2d 1151 (N.D. Cal. 2005).

5 Federal Nat. Mortg. Ass'n v. Bostwick, 414 S.W.3d 521 (Mo. Ct. App. W.D. 2013).

6 TJ's Western Ware, Inc. v. Jefcoat, 136 So. 3d 1073 (Miss. Ct. App. 2013).

7 § 99.

8 Ninth RMA Partners, L.P. v. Krass, 57 Conn. App. 1, 746 A.2d 826, 41 U.C.C. Rep. Serv. 2d 585 (2000).
Where the interest rate on a note was indexed to the prime rate of a bank that had failed, the trial court, as trier of fact, was required to provide a reasonable rate of interest to effectuate the intent of the parties. Cadle Co. v. Regency Homes, Inc., 21 S.W.3d 670 (Tex. App. Austin 2000).

9 § 234.

10 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-303:5 [Rev.] (3d ed.).

11 Kissane v. Digitalville, Inc., 35 Misc. 3d 58, 944 N.Y.S.2d 819 (App. Term 2012).

[12] H.D. Graphics, L.L.C. v. It's Permanent, L.L.C., 150 So. 3d 936 (La. Ct. App. 2d Cir. 2014).

[13] Infrax Systems, Inc. v. Wood, 155 So. 3d 426 (Fla. 2d DCA 2015).

End of Document

12 Am. Jur. 2d Bills and Notes § 611

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XIII. Actions

G. Findings, Verdict, and Judgment

§ 611. Measure and amount of recovery in actions on negotiable instruments—Limitations on the recovery of attorney's fees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 534

A.L.R. Library

Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities, 23 A.L.R.5th 241

Necessity of introducing evidence to show reasonableness of attorneys' fees where promissory note provides for such fees, 18 A.L.R.3d 733

A party is entitled to attorney's fees in an action on a note where the note expressly provides for an award of attorney's fees in any action to enforce the note.[1] The language in a promissory note purporting to limit the note holder's recovery of attorney's fees does not serve to cap the amount of fees that the holder can recover.[2]

The amount of any attorney's fee awarded in an action on a promissory note must be reasonable.[3] When the parties have agreed on an amount for attorney's fees, such as a definite amount or a percentage of an amount due on a note, the stipulated amount will be enforced only to the extent that it provides for a reasonable attorney's fee for services actually rendered in accordance with its terms.[4] Allowing a holder of a dishonored check, who has prevailed on a contract claim against the drawer, to recover attorney's fees under a general statute allowing a claimant to recover attorney's fees in a suit on a contract does not disrupt Article 3.[5] Also, some states have statutes governing enforcement of attorney's fee provisions in promissory notes,[6] and one of the purposes of such statutes is to prevent a contractual provision for attorney's fees from constituting a penalty for failure to pay an indebtedness.[7] Because a party's entitlement to reasonable attorney's fees under a statute governing reasonable attorney's fees in notes is one of contract construction and the application of mathematical computation to uncontroverted amounts, it is a question of law for the court.[8]

Costs may be awarded to the prevailing party, and a prevailing party may be entitled to a presumption that it should be awarded costs.[9] A party may be a prevailing party entitled to attorney's fees even where the trial court does not enter judgment for the plaintiff on the notes.[10] A promissory note holder is a prevailing party, even if the makers prevailed on a mix of issues, where the holder successfully maintained its claim to collect on the promissory note.[11]

Footnotes

1 Rabo Agrifinance, Inc. v. Terra XXI, Ltd., 583 F.3d 348 (5th Cir. 2009) (applying Texas law); Washington v. Preferred Communication Systems, Inc., 157 A.3d 1226 (Del. 2017); NorthStar Education Finance, Inc. v. Scroggie, 2019 WL 1904924 (Mo. Ct. App. W.D. 2019); Maverick Benefit Advisors, LLC v. Bostrom, 2016 WY 96, 382 P.3d 753 (Wyo. 2016).
Promissory note holders who prevailed in an action for breach of notes were not entitled to an award of attorney's fees, where the terms of the promissory notes required the note maker to pay all reasonable "costs" incurred by the note holders in collecting or enforcing payment of the notes, but did not expressly authorize recovery of attorney's fees in addition to other ordinarily recoverable statutory costs. Midland Property Partners, LLC v. Watkins, 416 S.W.3d 805 (Mo. Ct. App. W.D. 2013).

2 In re Webber, 350 B.R. 344 (Bankr. S.D. Tex. 2006) (applying Texas law).

3 In re Hathaway, 364 B.R. 220 (Bankr. E.D. Va. 2007) (applying Virginia law); Citizens Bank of Massachusetts v. Travers, 69 Mass. App. Ct. 174, 866 N.E.2d 974 (2007); F. R. Hernandez Const. & Supply Co., Inc. v. National Bank of Commerce of Brownsville, 578 S.W.2d 675 (Tex. 1979).
The trial court's award of attorney's fees of $31,605 to plaintiffs was not unreasonable where plaintiffs demonstrated that they had incurred $29,793 before trial, much of the attorney's work was necessitated by defendants' actions in converting what should have been a simple action on a promissory note into a much more complicated lawsuit, and defendants' counterclaims and defenses were unsuccessful. Bacon v. Uhl, 173 S.W.3d 390 (Mo. Ct. App. S.D. 2005).

4 Geller v. Lesk, 230 Ariz. 624, 285 P.3d 972 (Ct. App. Div. 1 2012), as amended, (Sept. 26, 2012).

5 1/2 Price Checks Cashed v. United Auto. Ins. Co., 344 S.W.3d 378, 74 U.C.C. Rep. Serv. 2d 659 (Tex. 2011).

6 Hamilton State Bank v. Kelly Capital Investments, LLC, 335 Ga. App. 252, 779 S.E.2d 757 (2015); In re 375,757.47, 240 N.C. App. 505, 771 S.E.2d 800 (2015).

7 Eagle Jets, LLC v. Atlanta Jet, Inc., 347 Ga. App. 567, 820 S.E.2d 197 (2018).

8 AgSouth Farm Credit, ACA v. Gowen Timber Co., Inc., 336 Ga. App. 581, 784 S.E.2d 913 (2016).

9 Am. Jur. 2d, Costs § 7.
A purchaser was entitled to attorney's fees as a prevailing party in a suit against builders regarding payment on a promissory note, even though the promissory note did not contain an attorney's fee provision, where the real estate contract included an attorney's fee provision for litigation arising out of the contract, the promissory note involved the same transaction as the contract, and the note existed only as a result of payment terms in the contract. Roberts v. Adams, 47 P.3d 690 (Colo. App. 2001), subsequent determination, 2004 WL 1179373 (Colo. App. 2004).

10 Wadsworth v. WWDM, Ltd., 162 Or. App. 622, 986 P.2d 1197 (1999) (the plaintiff was entitled to attorney's fees where the plaintiff prevailed by declaratory judgment on a substantial part of her claim on the notes and prevailed completely on defendants' counterclaim that the notes were subject to recoupment).

11 Brooks v. Hollaar, 297 P.3d 125 (Alaska 2013); Premier Capital, Inc. v. Grossman, 92 Conn. App. 652, 887 A.2d 887 (2005).
A lender was the prevailing party in an action to enforce a promissory note, for purposes of entitlement to attorney's fees under the note, even if the borrower was successful in eliminating interest at the default rate, as the lender obtained a judgment for the full amount of the note plus interest, which was what the lender demanded in the complaint. Glenn Wright Homes (Delray) LLC v. Lowy, 18 So. 3d 693 (Fla. 4th DCA 2009).

End of Document

12 Am. Jur. 2d Bills and Notes Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

Topic Summary

Correlation Table

Bills and Notes
This table shows where the subject matter in the various sections of the former edition of American Jurisprudence 2d is set forth in this revised volume. This table enables the user to translate references found in the prior edition and other legal publications into references to this edition.

Where the subject matter of a particular section of the prior edition of the article is now treated in another article, the title and section of that article is given. The reader should always consult the volume index for detailed information.

2009	2019
1	§1
2	§2
3	§3
4	§4
5	§5
6	§6
7	§7
8	§8
9	§9
10	§10
11	§11
12	§12
13	§13

14	§14
15	§15
16	§16
17	§17
18	§18
19	§19
20	§20
21	§21
22	§22
23	§23
24	§24
25	§25
26	§26
27	§27
28	§28
29	§29
30	§30
31	§31
32	§32
33	§33
34	§34
35	§35
36	§36
37	§37
38	§38
39	§39
40	§40

41	§41
42	§42
43	§43
44	§44
45	§45
46	§46
47	§47
48	§48
49	§49
50	§50
51	§51
52	§52
53	§53
54	§55
55	§56
56	§57
56	§58
57	§54
58	§59
59	§60
60	§61
61	§62
62	§63
63	§64
64	§65
65	§66
66	§67

67	§68
68	§69
69	§69
69	§70
70	§71
71	§72
72	§73
73	§74
74	§75
75	§76
76	§77
77	§78
78	§79
79	§80
80	§81
81	§82
82	§83
83	§84
84	§85
84	§86
85	§86
86	§87
86	§90
87	§88
88	§89
89	§90
90	§91

91	§92
92	§93
93	§93
94	§94
95	§95
96	§96
97	§97
98	§98
99	§99
100	§100
101	§101
102	§102
103	DELETED
104	§103
105	§104
106	§105
107	§105
108	§106
109	§107
110	§108
111	§109
112	§110
113	§111
114	§112
115	§113
116	§114
117	§115

118	§116
119	§117
120	§118
121	§119
122	§120
123	§121
124	§122
125	§123
126	§124
127	§125
128	§126
129	§127
130	§128
131	§129
132	§130
133	§131
134	§132
135	§133
136	§134
137	§135
138	DELETED
139	§136
140	§137
141	§138
142	§139
143	§140
144	§141

145	§142
146	§143
147	§144
148	§145
149	§146
150	§147
151	§148
152	§149
153	§150
154	§151
155	§152
156	§153
157	§154
158	§155
159	§156
160	§157
161	§158
162	§159
163	§160
164	§161
165	§162
166	§163
167	§164
167	§166
168	§165
169	§166
170	§167

171	§168
172	§169
173	§170
174	§171
175	§172
176	§173
177	§174
177	§182
178	§175
179	§176
180	§177
181	§178
182	§179
183	§180
184	§181
185	§182
186	§183
187	§184
188	§185
189	§186
189	§187
190	§187
191	§188
192	§189
193	§190
194	§191
195	§192

196	§193
197	§194
198	§195
199	§190
200	§196
201	§197
202	§198
203	§199
204	§200
205	§201
206	§202
207	§203
208	§204
209	§205
209	§271
210	§206
211	§207
212	§208
213	§209
214	§210
215	§211
216	§212
217	§213
218	§214
219	§215
220	§216
221	§217

222	§218
223	§219
224	§220
225	§221
226	§222
227	§223
228	§224
229	§225
230	§226
231	§227
232	§228
233	§229
234	§230
235	§231
236	§231
237	§232
238	§233
239	§234
240	§235
241	§236
242	§237
243	§238
244	§239
245	§240
246	§241
247	§242
248	§243

249	§244
250	§245
251	§246
252	§247
253	§248
254	§249
254	§255
255	§250
256	§251
257	§252
258	§253
259	§254
260	§255
261	§255
262	§255
263	§256
264	§257
265	§258
266	§259
267	§260
268	§261
269	§262
270	§262
271	§263
272	§264
273	§265
274	§266

275	§267
276	§268
277	§269
278	§270
279	§271
280	§272
281	§273
282	§273
283	§274
284	§275
285	§276
286	§277
287	§278
288	§279
289	§280
290	§281
291	§282
292	§283
293	§284
294	§285
295	§286
296	§287
297	§288
298	§289
299	§290
300	§290
301	§291

302	§292
303	§293
304	§294
305	§295
306	§296
307	§297
308	§298
309	§299
310	§300
311	§301
312	§302
313	§303
314	§304
315	§305
316	§306
317	§307
318	§308
319	§309
320	§310
321	§311
322	§312
323	§313
324	§314
325	§314
326	§315
327	§316
328	§317

329	§318
330	§319
331	§320
332	§321
333	§322
334	§323
335	§324
336	§325
337	§326
338	§327
339	§328
340	§329
341	§330
342	§331
343	§332
344	§333
345	§334
346	§335
347	§336
348	§337
349	§338
350	§339
351	§340
352	§341
353	§342
354	§343
355	§344

356	§345
357	§346
358	§347
359	§348
360	§349
361	§350
362	§351
363	§352
364	§353
365	§354
366	§355
367	§356
368	§357
369	§358
370	§359
371	§360
372	§361
373	§362
374	§363
375	§364
376	§365
377	§366
378	§367
379	§368
380	§369
381	§370
382	§371

383	§372
384	§373
385	§374
386	§375
387	§376
388	§377
389	§378
390	§379
391	§380
392	§381
393	§382
394	§383
395	§384
396	§385
397	§386
398	§387
399	§388
400	§389
401	§390
402	§391
403	§392
404	§393
405	§394
406	§395
407	§396
408	§397
409	§398

410	§399
411	§400
412	§401
413	§402
414	§403
415	§404
416	§405
417	§406
418	§407
419	§408
420	§409
421	§410
422	§411
423	§412
424	§413
425	§414
426	§415
427	§416
428	§417
429	§418
430	§419
431	§420
432	§421
433	§422
434	§423
435	§424
436	§425

437	§426
438	§427
439	§428
440	§429
441	§430
442	§431
443	§432
444	§433
445	§434
446	§435
447	§436
448	§437
449	§438
450	§439
451	§440
452	§441
453	§442
454	§443
455	§444
456	§445
457	§446
458	§447
459	§448
460	§449
461	§450
462	§451
463	§452

464	§453
465	§454
466	§455
467	§456
468	§457
469	§458
470	§459
471	§460
472	§461
473	§462
474	§463
475	§464
476	§465
477	§466
478	§467
479	§468
480	§469
481	§470
482	§471
483	§472
484	§473
485	§474
486	§475
487	§476
488	§477
489	§478
490	§479

491	§480
492	§481
493	§482
494	§483
495	§484
496	§485
497	§486
498	§487
499	§488
500	§489
501	§490
502	§491
503	§492
504	§493
505	§494
506	§495
507	§496
508	§497
509	§498
510	§499
511	§590
512	§500
513	§501
514	§502
515	§503
516	§504
517	§505

518	§506
519	§507
520	§508
521	§509
522	§510
523	§511
524	§512
525	§513
526	§514
527	§515
528	§516
529	§517
530	§518
531	§519
532	§520
532	§521
533	§521
534	§522
535	§523
536	§524
537	§525
538	DELETED
539	§526
540	§527
541	§528
542	§529
543	§530

544	§532
545	§533
546	§534
547	§535
548	§536
549	§537
550	§538
551	§539
552	§540
553	§541
554	§542
555	§543
556	§544
557	§545
558	§546
559	§547
560	§548
561	§549
562	§550
563	§551
564	§552
565	§553
566	§554
567	§555
568	§556
569	§557
570	§558

571	§559
572	§561
573	§562
574	§563
575	§564
576	§565
577	§566
578	§567
579	§568
580	§569
581	§570
582	§571
583	§572
584	§573
585	§574
586	§575
587	§577
588	§578
589	§579
590	DELETED
591	§580
592	§581
593	§582
594	§583
595	§584
596	§585
597	§586

598	§587
599	§588
600	§589
601	§590
602	§591
603	§592
604	§593
605	§594
606	§595
607	§596
608	§597
609	§598
610	§599
611	§600
612	§601
613	§602
614	§603
615	§604
616	§605
617	§606
618	§607
619	§608
620	§609
621	§610
622	§611

End of Document